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INTERSTATE COMMERCE COMMISSION REPORTS.  
VOLUME V.

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OF THE

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OF THE

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July 1st, 1891, to September 1st, 1893.

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## **Interstate Commerce Commission.**

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HON. WILLIAM R. MORRISON, OF ILLINOIS, *Chairman.*

HON. WHEELOCK G. VEAZEY, OF VERMONT.

HON. MARTIN A. KNAPP, OF NEW YORK.

HON. JAMES W. McDILL, OF IOWA.

HON. JUDSON C. CLEMENTS, OF GEORGIA.

EDWARD A. MOSELEY, *Secretary.*



THE BOSTON FRUIT AND PRODUCE EXCHANGE  
v. THE NEW YORK & NEW ENGLAND RAILROAD  
COMPANY, THE NEW YORK, NEW HAVEN &  
HARTFORD RAILROAD COMPANY, THE PENN-  
SYLVANIA RAILROAD COMPANY, THE CEN-  
TRAL RAILROAD COMPANY OF NEW JERSEY,  
AND THE LEHIGH VALLEY RAILROAD COM-  
PANY.

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Application for rehearing filed by the Pennsylvania Railroad Company May 11, 1891.—Hearing on Application for rehearing had June 22, 1891.—Decision filed July 2, 1891.

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At the hearing of this case upon its merits, the Commission prescribed the freight rate upon peaches in carload lots, from New Jersey and the Delaware Peninsula, to Boston, Massachusetts. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely:

*Held*, That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case, the Commission could only prescribe a single rate for the service as an entirety, to be reasonably and fairly divided among the several carriers by themselves; that the motion for a rehearing be overruled.

*James A. Logan* and *George V. Mussey*, for Pennsylvania R. R. Co., in support of the application.

*Francis I. Gowen*, for Lehigh Valley R. R. Co.

*F. C. Manchester*, for complainant, in opposition to the application.

MEMORANDUM.

BY THE COMMISSION:

The Commission having decided, in this case, that the transportation of peaches by the defendants, from the peach

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growing districts of New Jersey and the Delaware Peninsula, to Boston, Massachusetts, was essentially interstate traffic, and therefore within the jurisdiction of the Commission, thereupon, in view of the facts found and reported, prescribed a maximum rate of freight charge, when carried in corload lots, of fourteen dollars a net ton, in cars of fifteen tons' capacity, and at the rate of sixteen dollars a net ton, in cars of twelve tons' capacity, and at the rate of eighteen dollars a net ton, in cars of nine tons' capacity, and having established these rates for the station of Wyoming, Delaware, which was taken as an illustration, the rates for the other stations were fixed by relation to those rates, the same being greater or less, according to the respective distances of those stations from Boston, as appears from the former opinion and the order issued thereon.

The Pennsylvania Railroad Company, one of the defendants, now moves for a rehearing, alleging as causes therefor :

*First.* That its connecting lines construe the opinion of the Commission as justifying them in insisting on the rate of 48-100 cents per ton per mile, for the proportion of the haul, which, if accepted by this company, would result in a reduction of about twenty-five per cent. for its proportion of the haul from Wyoming to Jersey City. That a reduction to that amount, or any considerable proportion thereof, would be unjust and unreasonable.

*Second.* That the special, optional service, afforded by the Pennsylvania Railroad Company and the lines south of it, cannot be furnished at a rate in any substantial degree less than that now charged.

Under this second alleged cause, it is specified that the cars fitted up for the service all belong to the Pennsylvania Railroad Company, or its affiliated lines, and none of them are furnished by the other railroad companies, that it is able to furnish equipment for the business, but at the expense of its other service; that it puts the fittings into the cars, rendered necessary by the demands of the traffic, and the other companies do not reimburse it therefor; that the transportation

of peaches by the special service interferes with its other business and has resulted in a loss of revenue ; that shippers of other merchandise have been unable, during the peach season, by reason of the withdrawal of the cars for this service, to obtain facilities for the shipment of such other merchandise.

It was insisted at the time of the original hearing of this case, that the traffic was not interstate business, but that in the movement of the peaches by this special service, the several railroad companies were quite independent of each other, but the Commission held otherwise and that the business was essentially interstate in its character and was treated as a single transaction between the combined defendant railroad companies on the one hand, and the shippers on the other. Having determined this much, upon the case as presented, the Commission could only prescribe a single rate for the entire service, and accordingly fixed the charges above set forth.

The present motion of the Pennsylvania Railroad Company does not expressly state that there are any new facts which might be developed by a reopening of the case, which would materially affect the decision of the Commission as to the freight charges, treated as an entirety. It is fairly inferable from the motion that the Pennsylvania Railroad Company does not now claim to have any new facts, bearing upon that question, which it did not present upon the occasion of the hearing upon the merits, but it complains rather of injustice to it, unless the other defendants divide the rate which the Commission has fixed, otherwise than upon a mileage basis.

The Commission was only called upon by the complainant to prescribe a just and reasonable maximum freight charge to be made for this through interstate business. It therefore, under the pleadings of the parties, had nothing to do with the proportionate shares of the different carriers. These divisions may sometimes very properly be scrutinized by the Commission, in arriving at a just and reasonable rate (*Nicolai & Brady v. The Pennsylvania R. R. Co.*, 2 I. C. C. Rep. 131; 2 Inters. Com. Rep. 78), for the divisions agreed

to between the carriers "are not without significance in determining what are reasonable rates for the whole distance in question;" but as an original proposition in the matter of fixing of a through rate, especially in dealing with peculiar circumstances such as are developed by this case, the Commission can only say what is a just and reasonable charge for the whole distance, naming an entire and single rate therefor, and leaving to the several carriers the detail of properly dividing up the entire rate according to what may seem just and equitable to all concerned, in view of all the circumstances. *Little Rock & M. R. R. Co. v. East Tenn., V. & G. R. R. Co.*, 3 I. C. C. Rep. 1; 2 Inters. Com. Rep. 454.

It may be that the defendants will be unable to agree about the division of the through rate, but it is evidently no more complicated than many other questions relating to joint tariffs and joint operations, which are every day decided by interested carriers, and which all ought to meet in a spirit of fairness; in fact, this matter has been relieved of one complication, and this should facilitate negotiations, the entire rate having been finally determined.

It is proper to say, however, that it appears that many of the considerations upon which the Commission arrived at the determination to allow a freight charge for this special service, greater than that for other merchandise, were peculiar to the Pennsylvania Railroad Company, and in which the other railroad companies operating the line east of the Harlem River did not participate. These considerations, in the opinion of the Commission, justly entitle the Pennsylvania Railroad Company to a larger proportion of the entire charge than it would be entitled to if the division of the new rate should be made on a mileage basis merely. It was not the intention to raise the compensation of the line east of the Harlem River, but such would be the effect if the freight charge should be divided on a mileage basis, in the case of cars of fifteen and twelve tons' capacity. It seems almost unnecessary to say that it is not a fair construction of the opinion heretofore rendered to claim that it justifies any of the carriers in insisting upon such a division of the freight charge.



The most that was said in the opinion, as to the charge per ton, per mile, was simply by way of argument, and for the purpose of comparison of the rates adjudged to be reasonable as to peaches, with those effective as to other merchandise between the same points. It is true that the portion of the decision relating to the rates for shipments from those stations more or less distant from Boston than is Wyoming, which latter place was taken by all the parties as illustrative of the situation, the rates were put on a mileage basis. This was done because it would seem that the Pennsylvania Railroad Company, in its tariff in effect when the case was heard, had made substantially that difference as to those other stations, as will be seen from the tariff sheets, and from the following table compiled therefrom. The former rate on cars of twelve tons' capacity from Wyoming to Boston was \$200, the new rate being \$182, with ten dollars added for ferriage in both cases.

STATIONS.	Difference in Mileage.	Difference of Freight Charge from Wyoming, Delaware.	
		By the tariff.	By the decision
Porter .....	40	\$17.00	\$19.29
Mt. Pleasant.....	30	16.00	14.47
Middletown.....	26	13.00	12.54
Townsend.....	22	12.00	10.61
Blackblrd.....	20	10.00	9.64
Green Spring.....	17	9.00	8.20
Clayton.....	14	8.00	6.75
Brenford.....	11	6.00	5.30
Cheswold.....	9	5.00	4.34
Dover .....	3	2.00	1.44

For stations beyond Wyoming, the difference between the charge from that station for those stations, is practically the same in the decision as in the tariff. It was thought best, for the sake of uniformity, to adopt about the same scale of differences which the practice of the Pennsylvania Railroad Company had sanctioned.

When the foregoing motion of the Pennsylvania Railroad Company was heard, counsel on behalf of the Lehigh Valley Railroad Company, without filing a motion to that effect, asked and was accorded leave to present reasons which he

deemed have a bearing upon the question of a rehearing. At the outset of his remarks he stated that the Lehigh Valley Railroad Company "has not shared in any through rate, nor has it been a party to any rate that involves a charge of so much per car."

This assertion of counsel is sustained by the testimony. There was no testimony that the Lehigh Valley Railroad Company had made a through rate on carload lots, and the fact was not overlooked in the former decision, which deals with nothing else. The Commission has only said that if an arrangement is made with the companies operating that portion of the line east of the Harlem river for the through transportation of peaches to Boston, and if that business is done in carload quantities, then the rates prescribed by the Commission must prevail.

It may be said, however, that in the peach tariff filed with the Commission by the Lehigh Valley Railroad Company, rates are not given for all the stations on the line of that road. The most remote station from Boston, which appears upon the filed tariff, is Freemansburg; the rate on peaches would give to all the carriers, on a carload of twelve tons, \$151.34, which is \$79.34 more than would be charged on the same quantity of first-class merchandise between the same points. The nearest station to Boston which appears on the filed tariff is Bound Brook; the rate on peaches would give to all the carriers, on a carload of twelve tons, \$126, which is \$54 more than would be charged on the same quantity of first-class merchandise between the same points. Measured by this charge on goods of that sort, it is difficult to see why the rate fixed for the transportation of peaches is not just and reasonable to this defendant.

Motion for rehearing overruled.

DANIEL BUCHANAN v. THE NORTHERN PACIFIC  
RAILROAD COMPANY.

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Complaint filed April 25, 1891.—Answer filed May 15, 1891.—Heard at Spokane Falls, Wash., May 29–30, 1891.—Brief filed October 3, 1891.—Decided October 21, 1891.

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The rates on wheat and barley of fifty and fifty-six cents per hundred-weight, respectively, charged by defendant from Ritzville, Washington, to St. Paul, Minnesota, a distance of 1,576 miles, in view of the circumstances and conditions surrounding the traffic, held not to be unreasonable.

*Jones & Voorhees*, for complainant.

*James McNaught* and *J. H. Mitchell*, for defendant.

REPORT AND OPINION OF THE COMMISSION.

**VEAZEY**, *Commissioner* :

The complainant is a farmer, residing near Ritzville, Adams County, in the State of Washington. The defendant operates a line of railroad from the Pacific coast, passing through Ritzville, to St. Paul.

The complainant sets forth that in the month of June, 1885, he came from Wisconsin, and looked over the situation in the vicinity of the place where he ultimately located, with a view to investing in farm lands, and having ascertained that the freight rate on grain from Ritzville to Duluth and St. Paul was 40 cents per hundred pounds, and that as this rate was established and maintained in the complete absence of competition, and in the presence of very little business, he based his calculations on the continuance of that rate, and accordingly soon afterwards bought two entire sections of land of the defendant and commenced his farming operations. That in the year 1888, he raised a crop of barley on the land with a view to market the same in Chicago; that when he offered to ship the grain, he found that defendant had in September previous advanced the rates from 40 to 56 cents per hundred pounds to St. Paul; that at the same time

the rate on wheat had been advanced to 45 cents ; that at the time of bringing the complaint, the rate on barley was 56 cents, and on wheat 50 cents ; that these advanced rates are unjust, unequal, unreasonable and oppressive, and absorb all the profits he expected to derive from investing in the land ; that the defendant utterly fails to move grain offered, either east or west, as fast as it is offered ; that contrary to the general custom and usage of railroad management, the largely increased business has brought an advance of rates instead of a reduction ; that in the distribution of cars, discrimination is made against eastern shipments of grain by the defendant, and that when cars can be had for shipping grain to Puget Sound ports, none can be had to ship grain to Chicago, except at long intervals.

The answer of the defendant admits the occupation and residence of the complainant, and that it is engaged in the traffic substantially as alleged in the complaint ; denies any information sufficient to form a belief as to the facts preceding the complainant's investment, as alleged ; asserts that the defendant never represented to complainant or any other person that the rates in force in 1885, or at any other time, on grain or any products, should not be advanced ; denies that the rate of 56 cents on barley, and 50 cents on wheat, is unjust, unequal, unreasonable and oppressive, and also denies that it has failed to conform to its duty as a common carrier in moving grain from the east to the west within a reasonable time after being offered for shipment, or that it has ever made any discrimination against eastern shipments of grain, in favor of western shipments, or shipments to points on Puget Sound.

The defendant also alleged as a reason for the advance of grain rates, specified in the complaint, that after the completion of its line to the Pacific coast, while it had considerable westbound tonnage, there was barely anything for eastern shipment ; that under those circumstances it made an arrangement with the elevator companies, doing business on its line, by which it was agreed to make a rate of 40 cents from the then Territory of Washington, on eastbound shipments of grain, provided said elevator companies would,

when circumstances permitted, ship the grain east and thence to Europe, *via* the Atlantic Ocean, rather than follow the old established route, *via* the Pacific Ocean; that this rate was open to all shippers and was made as a matter of accommodation to the defendant, as it was only possible for the defendant to handle the grain at this rate under the peculiarities of the market then existing, that is, a strong eastern market, western wheat a failure and transatlantic freights low, and transpacific rates high; that the only conditions upon which the defendant could make this rate was that it was better to carry loaded cars for something than empty cars for nothing; that the rate on wheat of 40 cents, was continued until June 9, 1888, when the volume of business under the stimulus of the low rate was greater than was necessary to fill its empty cars; thereupon the rate was raised to 45 cents; that in April, 1889, the eastern shipments being still heavy, the rate was again raised to 50 cents on wheat in order to bring down the volume of business to a point where it would not be necessary to haul empty car west; that the rates have been published in conformity to law and have been open to all parties without discrimination that with sailing charters low from the Pacific and high rate from the Atlantic seaboard to Europe, even if the rate on wheat was 40 cents, it would be impossible for a shipper to ship any wheat east; that the rate of 50 cents is a maximum rate and that all intermediate territory is placed on the same basis; that the rate now charged is only  $\frac{1}{8}$  of a cent per mile; that much of the country through which the line is made is unsettled and barren, and passes over the Rocky Mountains, and is maintained at a very great cost; that the rate of 50 cents on wheat, and 56 cents on barley, considering the amount of barley shipped over the road, is less than the defendant can afford to haul it, and less than the cost of hauling, and that the only condition under which a rate is made is, when the defendant is hauling a number of empty cars east.

From the foregoing abstract of the pleadings, the issue appears to be solely as to the reasonableness of the rates from Ritzville to St. Paul, under the circum-

under which the traffic is conducted, and the facts material to the controversy are as follows:

The distance from Ritzville to St. Paul is 1,576 miles. The amount of business done at the station, from the shipment of merchandise, averages about \$3,000 a month. In 1890 there were 46 carloads of grain shipped east and 350 west.

When complainant looked the property over in June, 1885, the rate on grain was 40 cents per cwt., and he made his investment in the land which he bought of the defendant upon the supposition stated in his complaint, that the rates would not be advanced, but it did not appear that the matter was ever discussed by him with any of the officers of the defendant. There was, therefore, no agreement between the parties in regard to the rates for the future.

The defendant's rates on grain have been blanket rates, applying to quite a large section of country in which Ritzville is located, including all the "Columbia River Country," and the 40-cent rate on wheat was made as a temporary matter after the east and west sections of the road were completed, and before the completion of the Cascade division, in order to take care of the little grain which was raised in that section, the natural outlet and markets for which were on the Pacific coast, but as soon as the Cascade division was completed, connecting the Columbia River Country with the Pacific coast, the defendant put in effect the same rates which had before that been in effect over the lines of the Union Pacific, through to the Pacific coast.

Another cause of the 40-cent rate which prevailed until June 9, 1888, and the 45-cent rate which prevailed from that date to April, 1889, and of the 50-cent rate which has since prevailed, was a different condition of the traffic on the defendant's railroad, as to empty cars; up to the first-named date there was an excess of empty cars near the western terminus, but at that time this condition of affairs began to change, and in April, 1889, became reversed, there then being an excess of cars at the eastern terminus.

The defendant's railroad crosses the Rocky Mountains between Ritzville and St. Paul, and this fact makes this particular portion of the road very expensive of operation.

Taking all the traffic of the defendant during the year 1890, its average cost was one cent and eight mills for each ton of freight moved one mile.

The evidence failed to sustain the claim of the complainant that discrimination was made by the defendant against eastern shipments. The only evidence in support of the claim was that of the complainant, who testified that on one occasion he was delayed somewhat in obtaining a car for his eastern shipment, but after some controversy with the station agent at Ritzville, in which no other official of the defendant participated, the car was furnished. The reason which complainant said that the station agent gave him was that he could not give him a car at first, but when there was an empty car it was given to complainant; while he was loading it, the station agent told him that the rate had been withdrawn, but that same evening the shipment was accepted and duly forwarded. This was complainant's testimony when his attention was specifically directed to the clause of the complaint which has reference to this subject.

As to the first question made, as to whether on the facts as stated the defendant was bound to maintain the rate which prevailed when defendant sold complainant the land, there was no agreement for a continuance of the rate, and defendant was not bound to maintain the rate then in force. Rates, particularly in a new country, are liable to change with the varying extraneous circumstances surrounding any particular traffic. The increasing or diminishing volume of business, the market price of the articles to be transported, the relation of local to through freights, the articles of freight upon which the railroad must depend as compared with other roads transporting similar commodities through more populous communities, the development of competition, the opening of new lines of communication, the course of business which may concentrate empty cars at either terminus of the line, all have a bearing upon the making of reasonable rates. *Evans v. Oregon Nav. Co.*, 1 I. C. C. R. 325; 1 Inters. Com. Rep. 641; *Boston Chamber of Commerce v. Railroads*, 1 I. C. C. R. 436; 1 Inters. Com. Rep. 754; *Missouri Pacific R. Co. v. Texas & Pacific R. Co.*, 30 Fed. Rep. 2; *Concord & Ports-*



mouth R. Co. *v.* Forsaith, 59 N. H. 122; Scofield *v.* Lake Shore, &c., 43 Ohio St. 571.

In this case the different circumstances surrounding the traffic at the time the complaint was filed, as compared with those when the complainant bought his land, amply justified the defendant in changing its rates.

The real question in the case, and the one upon which the case turns, is whether the rate of 50 cents on wheat and 56 cents on barley, per hundred pounds from Ritzville to St. Paul, is a reasonable rate in itself. There can be but one answer to the question. The rate on wheat amounts to about six mills and a third per ton per mile for a traffic which last year only amounted to 46 carloads. It is not seriously contended that this rate is unreasonable, except by comparison with the prevailing rates on grain from Chicago to New York, which average about four and six-tenths mills per ton per mile. This comparison is hardly a fair one to be made, for one of the important considerations in the making of a rate is the volume of traffic. The vast stores of grain which are concentrated in Chicago, and which are transported to New York by the train-load, some of which almost equal the entire output of this station for a year, is traffic under such dissimilar circumstances as to be of little value as a test of what is a reasonable rate under the circumstances surrounding the traffic at Ritzville.

The complainant's evidence tended to show that with present prices in the market, and with present freight rates, he is unable to operate his farm at a profit. His situation, like that of many others, is unfortunate in this respect, but the cases in which the farmers of the country are afforded a rate of less than seven mills per ton per mile for marketing their products are extremely rare, and the complainant cannot fairly attribute his embarrassment to the freight rate which the defendant charges him, as, under the circumstances, it is a just and reasonable charge.

Complaint dismissed.



**THE RAILROAD COMMISSION OF FLORIDA v. THE SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY, THE CHARLESTON & SAVANNAH RAILWAY COMPANY, THE NORTH EASTERN RAILROAD COMPANY OF SOUTH CAROLINA, THE WILMINGTON, COLUMBIA & AUGUSTA RAILROAD COMPANY, THE WILMINGTON, & WELDON RAILROAD COMPANY, THE SEABOARD & ROANOKE RAILROAD COMPANY, THE PETERSBURG RAILROAD COMPANY, THE RICHMOND & PETERSBURG RAILROAD COMPANY, THE RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY, THE ALEXANDRIA & FREDERICKSBURG RAILWAY COMPANY, THE ALEXANDRIA & WASHINGTON RAILWAY COMPANY, THE BALTIMORE AND POTOMAC RAILROAD COMPANY, THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, THE BALTIMORE STEAM PACKET COMPANY, THE NEW YORK & TEXAS STEAMSHIP COMPANY, THE CLYDE STEAMSHIP COMPANY, THE OCEAN STEAMSHIP COMPANY OF SAVANNAH.**

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**Complaint filed December 30, 1890.—Answers filed January 20 to March 24, 1891.—Heard at Jacksonville, Fla., March 30 and 31, 1891.—Briefs filed April 16 to July 28, 1891.—Decided October 29, 1891.**

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- 1. The Act to regulate commerce makes it the duty of this Commission "to investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or Territory at the request of such**

Commissioner or Commission." The complaint in this case was brought by and in the name of the Railroad Commission of Florida, but the real parties in interest are large classes of growers, buyers and shippers in the State of Florida. Since the complaint was filed the nominal complainant has ceased to exist. *Held*, That the repeal of the law creating the Railroad Commission of Florida could not operate as a withdrawal or dismissal of the complaint, that Commission having been only an instrument for the transmission of the complaint to this Commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the Act to regulate commerce and of the rules of courts of law in analogous cases. *Held further*, That under the provision of the Act to regulate commerce authorizing this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction.

2. The defendants the Clyde Steamship Company, the New York and Texas Steamship Company, and the Florida Central and Peninsular Railroad Company are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto.
3. It does not appear that defendants willfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that any one has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission, to a District Attorney of the United States for the institution of a prosecution, and no ground for a recommendation of reparation for such injury.
4. While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.
5. Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing, and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country.
6. Upon consideration of all the facts and circumstances in this case—*Held*, That the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and, as such persons are not parties to this

proceeding and the amounts wrongfully received from them, respectively, cannot be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.

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*C. M. Cooper*, for complainant.

*R. G. Erwin* and *John E. Hartridge*, for Savannah, Florida and Western Ry. Co. and Charleston & Savannah Ry. Co.

*W. G. Elliott*, for North Eastern R. R. Co. of S. C., Wilmington, Columbia & Augusta R. R. Co., Wilmington & Weldon R. R. Co., Petersburg R. R. Co., and Richmond & Petersburg R. R. Co.

*James A. Logan*, for Washington Southern Ry. Co. (successor to the Alexandria & Fredericksburg Ry. Co. and the Alexandria & Washington Ry. Co.) Baltimore & Potomac R. R. Co., Philadelphia, Wilmington & Baltimore R. R. Co., Pennsylvania R. R. Co., and Richmond, Fredericksburg & Potomac R. R. Co.

*J C. Cooper*, for Florida Central & Peninsular R. R. Co.

*Lawton & Cunningham*, for Ocean Steamship Co.

#### REPORT AND OPINION OF THE COMMISSION.

#### BY THE COMMISSION :

The complaint in this case is filed by "the Railroad Commission of Florida," under an Act of the Legislature of that State, approved June 7, 1887, which makes it the duty of that Commission, in case of any violation of the Interstate Commerce Act affecting interests of the people of Florida, "to petition the Interstate Commerce Commission of the United States for the regulation and control of the offending railway company or companies, or other person or persons doing business as common carriers, by the application of the provisions of the Interstate Commerce Law of the United States and amendments thereto, and to take all necessary and expedient measures to secure to the people of Florida the full benefit of the Interstate Commerce Law in the regulation and control of interstate commerce."

After setting forth the capacity in which the complainants invoke the action of this Commission, the allegations of the complaint are in substance :

1. That the defendants are common carriers, constituting several lines, and as such are engaged, under a common control, management or arrangement, for continuous carriage or shipment, in the transportation of passengers and property, "wholly by railroad, and partly by railroad and partly by water, between various points in the State of Florida, south of and *via* Jacksonville, Fernandina, Callahan, Gainesville, Lake City, and Live Oak," in said State, and Baltimore, Philadelphia and New York, "and, by connecting lines, other eastern cities."

2. That said cities, Jacksonville, Fernandina, Callahan, Gainesville, Lake City, and Live Oak, are, "for the purpose of determining rates on shipments of oranges and lemons from points within the State of Florida to points without the limits of said State, base points," and that from said base points the defendants by arrangements and agreements among themselves have established the following lines :

1st. The Clyde Steamship Company, known as the Clyde Line, from Jacksonville.

2d. The New York & Texas Steamship Company, known as the Mallory Line, from Fernandina.

3d. A line composed of the Savannah, Florida & Western Railway and the Ocean Steamship Company of Savannah, from either Jacksonville, Callahan, Gainesville, Lake City or Live Oak.

4th. A line from either of said last named base points composed of the following carriers and known as *The Atlantic Coast Line*, to wit: The Savannah, Florida & Western Railway, the Charleston & Savannah Railway, the North Eastern Railroad of South Carolina, the Wilmington, Columbia & Augusta Railroad, the Wilmington & Weldon Railroad, the

Seaboard & Roanoke Railroad, and the Baltimore Steam Packet Company.

5th. A line from either of said base points composed of the following carriers and known as *The Atlantic Coast Despatch Line*, to wit: The Savannah, Florida & Western Railway, the Charleston & Savannah Railway, the North Eastern Railroad of South Carolina, the Wilmington, Columbia & Augusta Railroad, the Wilmington & Weldon Railroad, the Petersburg Railroad, the Richmond & Petersburg Railroad, the Richmond, Fredericksburg & Potomac Railroad, the Alexandria & Fredericksburg Railway, the Alexandria & Washington Railway, the Baltimore & Potomac Railroad, the Philadelphia, Wilmington & Baltimore Railroad and the Pennsylvania Railroad.

3. That "during and since the season of 1885-86, the through rates for the transportation of oranges and lemon from points in Florida south of and *via* said base point were, and are still made up of the rates charged by the gathering railroads in Florida to said base points and the rate therefrom to the points of destination," and that during the said season of 1885-86, and for each season since, said several lines, by arrangements and agreements among themselves, established and maintained rates for the transportation of oranges and lemons by said several lines, from said base points in Florida to points of destination with but few changes until and including the season of 1889-90, during which season said rates were to New York by said several lines as follows:

By the Clyde Line, 30 cents per standard box of pounds.

By the Mallory Line, 30 cents per standard box.

By the Savannah, Florida & Western Railway and Ocean Steamship Company, 30 cents per standard box.

By the Atlantic Coast Line, 37½ cents per standard box.

By the Atlantic Coast Despatch Line, 43 cents per standard box.

(The rates on said commodities by said lines to Philadelphia)

phia, Baltimore and other eastern cities were, it is alleged, in proportion to those to New York).

4. "That with the exception of the Clyde and Mallory Lines, each of which received the whole of the 30 cents rate as its share of each through shipment, each of said lines divided said rates so agreed upon for it, as its share of said through rate, in certain agreed proportions between the carriers composing said lines respectively."

5. That "said rates so voluntarily made and maintained by said lines afforded ample compensation for the service rendered," but at the beginning of the season of 1890-91, to wit, in November, 1890, the defendants "constituting said several lines combined and agreed to advance, and did actually advance, said rates 10 cents per standard box, and have been and are now, on all shipments from said base points to said points of destination, charging, demanding, collecting and receiving said advanced rates;" and that said advanced rates are unlawful and in violation of the Act to regulate commerce, because (1), the public notice of 10 days as required by section 6 of said Act was not made or given; (2), they are unjust, unreasonable and excessive, and (3), they materially injure an important industry and a large class of shippers who have during the last 25 years, at an expense of millions of dollars, built up in the State of Florida a valuable and productive industry, to wit, the growth and production of oranges, lemons and other citrous fruits, in reliance upon the continuation or probable decrease of the said previous rates voluntarily established and so long maintained.

The complainants ask that after hearing and investigation an order be made by this Commission commanding the defendants to cease and desist from said alleged violations of the Act to regulate commerce, and "requiring them thereafter to transport oranges and lemons at the rate of 25 cents per standard box by rail and water between said Florida base points and Baltimore, Philadelphia and New York, with differential rates added when shipments go between said points *via* all-rail lines," and that each of the defendants

which have participated in such alleged excessive increased rates be required to refund such excess to the shippers, and for general relief.

All the defendants have filed answers.

The Washington Southern Railway Company (as successor of the Alexandria & Fredericksburg Railway Company and of the Alexandria & Washington Railway Company), the Baltimore & Potomac Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company and the Pennsylvania Railroad Company answer jointly. They admit that they constitute part of the *Atlantic Coast Despatch Line* as set forth in the complaint, but allege that they did not unite in a through rate prior to October 1, 1888. They admit that the through rate in effect by said line from Jacksonville Florida, to New York from said date, October 1, 1888, to October 31, 1890, was 43 cents per standard box of 80 pounds; that on November 1, 1890, said rate was advanced to 53 cents, and that since said advance they have received their proportions respectively of the through advanced rate. They deny that the *proportions* of the rate prior to the advance received by them afforded ample compensation for the service rendered, and that the advanced rate is unjust, unreasonable or excessive, or in any respect in violation of the Act to regulate commerce, and aver that under the old rate the business was conducted over their lines at a loss and that under the present rate (of which they allege they receive only an average of eight mills per box to Washington, Baltimore, Philadelphia and New York), the traffic "barely pays the expenses of movement and is not, as yet, fairly remunerative."

The North Eastern Railroad Company of South Carolina, the Wilmington, Columbia & Augusta Railroad Company, the Wilmington & Weldon Railroad Company, the Petersburg Railroad Company and the Richmond & Petersburg Railroad Company, also file a joint answer in which they admit that the through rates on oranges have been, since the season of 1885-86, made up of the rates charged by the operating railroads in Florida to the basing points and the through rates therefrom to points of destination;



through rates on said traffic from the basing points to Baltimore, Philadelphia and New York existed over the Atlantic Coast Line and the Atlantic Coast Despatch Line from said season of 1885-86 until and during that of 1889-90, and during the said period the rates over said lines were as stated in the complaint; that each of the roads composing said lines divided said rates in certain agreed proportions, and that in November, 1890, said several carriers combined and agreed to advance and did advance said rates 10 cents per standard box, and have been, and are now, charging and receiving such advanced rates. They deny that the old rates afforded ample compensation for the services rendered and that the advanced rates are unreasonable and excessive or otherwise in violation of the Act to regulate commerce.

The Savannah, Florida & Western Railway Company admits that during and since the season of 1885-86 it has been one of the carriers constituting the 3d, 4th, and 5th lines mentioned in the complaint; that these lines have respectively made through rates from the basing points, which rates consist of the rates charged by the gathering railroads in Florida to such basing points and the through rate therefrom to the point of destination; that each of said lines divided said rates in certain agreed proportions between the carriers composing them; that said rates to New York were as alleged in the complaint from the season of 1885-86 to that of 1889-90, both inclusive, and that in November, 1890, said carriers by agreement advanced said rates 10 cents per standard box, and have been and are now charging and receiving the rates so advanced. It denies that the old rate "afforded ample compensation for the service rendered," and that the advanced rates are unjust, unreasonable and excessive, or otherwise in violation of the Act to regulate commerce.

The answer of the Charleston & Savannah Railway Company admits that it is one of the carriers constituting the 4th and 5th lines mentioned in the complaint, and is in other respects substantially the same as that of the Savannah, Florida & Western Railway Company.

The Ocean Steamship Company of Savannah also adopts the answer of the Savannah, Florida & Western Railway Com-



pany "in so far as the answer of said Railway Company may apply to a carrier by water," admitting the facts admitted in said answer and denying the allegations therein denied. It further alleges that it is a common carrier engaged in the carrying business solely upon navigable waters of the United States, and receives all its orange business from said Savannah, Florida & Western Railway Company, and that said railway company publishes and issues the rates required by law on behalf of said steamship company for the carriage of oranges.

The Richmond, Fredericksburg & Potomac Railroad Company admits that its road is a part of the "Atlantic Coast Despatch Line," and that the rate in effect between Oct. 1, 1888, and Oct. 31, 1890, by said line from Jacksonville, Florida, to New York was 43 cents per box of eighty pounds; that Nov. 1, 1890, said rate was advanced 10 cents and that it has since said advance received its proportion of the advanced rate. It denies that the old rate "afforded either ample or adequate compensation for the service rendered so far as its *proportion* was concerned," and avers, that, "in order to facilitate the transportation of oranges and lemons between Florida and northern cities, it together with the other companies composing the Atlantic Coast Despatch Line put on additional trains at a rate of speed much higher than that of other freight trains over said line, and procured special equipment to the end that this business should be promptly and safely moved to its destination." It denies also that the advanced rate is unreasonable and excessive, or otherwise in violation of the Act to regulate commerce.

The answer of the Seaboard & Roanoke Railroad Company admits the formation of the lines and the making and advance of rates as alleged in the complaint, but denies that the rates in force before such advance afforded ample compensation for the service rendered, and also denies that the advanced rates are unjust and unlawful or in violation of the Act to regulate commerce. It avers in this connection that, "in order to accommodate the business of transporting oranges and lemons between the base points in Florida and the points of destination, a portion of the railroad companies

complained of put on an additional schedule, making twenty miles per hour, or nearly double the speed of other freight trains over said roads; that special equipment has been provided and a number of cars supplied with air brakes and automatic couplers in order to facilitate the business, while the revenue does not exceed 8 mills per ton per mile; that in order to handle the business promptly the delivering roads require the grouping of certain destinations and loading in separate cars to accommodate this grouping, and, as a result, the cars transporting oranges and lemons average only about 60 per cent. of their full capacity, and the business is handled at a season of the year when there is but little return freight south-bound, and in many cases the cars are returned empty."

The Baltimore Steam Packet Company, the New York & Texas Steamship Company and the Clyde Steamship Company, file separately the same answer, in which, "reserving all questions of law and of fact and waiving no objections in law to the proceedings, and in consideration of the fact that any change of rate by any of the rail and water or all-rail lines between Florida and the northern points will more or less affect the rates" of their lines, they allege, "that the rates complained of, in view of the expensive character and rapidity of the transportation required by the delicate and perishable nature of the article in question, are neither unjust or unreasonable . . . and have not been and are not now properly remunerative to the carrier."

It is alleged in the complaint that the Florida Central & Peninsular Railroad is the only one of the defendants "wholly in the State of Florida" and that "the rest are included in lines partly within the State of Florida or entirely beyond its limits." This allegation is admitted by the Florida Central & Peninsular Road, and also the existence of the several lines mentioned in the complaint; but it denies that the alleged rates over said lines were made by it and avers that "its participation in the carriage of oranges and lemons has been upon the allowance of its locals to the basing point which is the terminus of its carriage in each case." It further denies any participation in the advance of rates complained of.

Most of the answers also put in issue the allegations of the complaint that public notice was not given of the advance in rates as required by the Act to regulate commerce, and that the advanced rates materially injure the business of growing oranges and other citrous fruits in Florida, "built up in reliance upon the continuation or probable decrease" of the old rates.

#### FACTS AND CONCLUSIONS.

The right of the complainant, while in existence, to institute and prosecute this proceeding is not denied by the defendants, but in a brief filed July 20, 1891, in behalf of the Pennsylvania Railroad, the Atlantic Coast Line, the Savannah, Florida & Western Railway Company and the Ocean Steamship Company of Savannah, attention is called to an Act of the Legislature of Florida, approved June 13, 1891, and taking effect from and after its passage, by which the Act creating "The Railroad Commission of Florida" (the complainant), is repealed, and it is contended that said Commission having been abolished there is now no "complaint before this Commission for investigation," and on that ground objection is made to further proceedings herein.

This is in effect a denial of the jurisdiction of this Commission to further entertain and investigate the complaint.

The Act to regulate commerce makes it the duty of this Commission to "investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or Territory, at the request of such Commissioner or Commission." The complaint in this case was forwarded by the Railroad Commission of Florida, and a hearing was had before the repeal of the law creating that Commission. That repeal did not and could not operate as a withdrawal or dismissal of the complaint. The "Railroad Commission of Florida" was only the conduit or instrument for the transmission of the complaint to this Commission and had fully performed that function before an end was put to its existence. It was only a nominal complainant and the complaint was made by it in its public capacity as a bureau or department of the State Government, under the authority given it in

the Act of its creation "to take all necessary and expedient measures to secure to the people of Florida the full benefit of the Interstate Commerce Law in the regulation and control of interstate commerce." The real parties in interest are large classes of growers, buyers and shippers; and to abate or dismiss the proceeding because the nominal complainant has been abolished would be to sacrifice substance to form in contravention of the spirit and letter of the Act to regulate commerce and of the rules of courts of law in analogous cases. (Thompson v. United States, 103 U. S. 480; The Sapphire, 11 Wall. 164; Bacon's Abridgement "Abatement" "F," pp. 15, 16.) Moreover the Act to regulate commerce authorizes this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," so that neither a complaint nor complainant is necessary to confer jurisdiction. The power given is not merely to "institute," but also to investigate and determine, and therefore includes the power to investigate and determine a matter originally brought to the attention of the Commission by a complainant which in contemplation of law has ceased to exist. If a case should arise under such circumstances, in which it appears that injustice might result to any interest from a continuance of the inquiry, this Commission would, in the exercise of its discretion, make such order as the exigency required; but the defendants in this proceeding have had a full and fair hearing upon the merits, the real question at issue has been thoroughly investigated, and no injury or disadvantage can result to them from a final determination on the evidence submitted.

The next question is, whether certain of the defendants, namely, the Clyde Steamship Company, the New York & Texas Steamship Company (known as the Mallory Line) and the Florida Central & Peninsular Railroad Company are common carriers engaged in interstate commerce as alleged in the complaint and as such subject to the jurisdiction of this Commission under the Act to regulate commerce. The other defendants are, under the admissions of their answers as well as the evidence, clearly within the purview of the law in respect to the traffic involved in the complaint.

While the Clyde Steamship Company and the New York & Texas Steamship Company constitute all-water lines, they each engage, in connection with the railroads, in the transportation of oranges from points in Florida to northeastern cities under through bills of lading and they joined in the action of the various railroad and steamship lines in advancing the rates in question and in the notice thereof to shippers issued Nov. 12, 1890. The Florida Central & Peninsular Railroad Company is the only one of the defendants wholly in the State of Florida and is not included in the lines set forth in the complaint, and it alleges as above stated that "its participation in the carriage of oranges and lemons has been upon the allowance of its local to the basing point, which is in each case the terminus of its service." This road, however, receives and carries oranges from points in Florida on its lines for delivery to other carriers to be transported to northeastern cities, issues through rates on such traffic and through bills of lading therefor, and is represented at the meetings of the transportation lines mentioned in the complaint at which such through rates are made. Upon these undisputed facts, and under the decision of this Commission heretofore several times promulgated, these companies are carriers of interstate commerce and subject to the jurisdiction of this Commission in respect thereto. (Chamber of Commerce of Milwaukee *v.* Flint & Pere Marquette R. R. Co. *et al.*, 2 I. C. C. Rep. 553; 2 Inters. Com. Rep. 393; Mattingly *v.* Penn. Co., 3 I. C. C. Rep. 592; 2 Inters. Com. Rep. 806; 4th Annual Report of I. C. C. 57; 3 Inters. Com. Rep. 337.)

As to the notice of advance in rates, it appears that the Savannah, Florida & Western Railway Company forwarded to this Commission such notice as to the rates *via* Savannah and the Ocean Steamship Company, the Atlantic Coast Line and the Atlantic Coast Dispatch Line. These notices were not received by the Commission until November 14, 1890, nine days before the increased rates were to become effective. The notices themselves were not dated, but the letter enclosing them bore date November 12, 1890. The testimony is conflicting and unsatisfactory as to whether notices to the

public of the increased rates were posted in conformity with the order of this Commission of March 23, 1889, at all the orange shipping points on the lines of defendants in Florida. Notices, however, in substantial compliance with that order, appear to have been duly posted at the principal shipping points and to have been sent to the other points in time to reach them all—with probably one or two exceptions—within the required time. It is provided in section 6 (as amended) of the Act to regulate commerce that “no advance shall be made in joint rates, fares and charges shown upon joint tariffs except after ten days’ notice to the Commission . . . .” and that the Commission “may prescribe from time to time the measure of publicity which common carriers shall give to advances . . . . in joint tariffs.” Pursuant to this authority the Commission has, by order of March 23, 1889, required ten days’ notice of an increase of joint rates to be posted at shipping points of the commodity or commodities affected by the increased rates. By section 10 of the Act, the “willfully” omitting or failing, on the part of a common carrier subject thereto, “to do any act, matter or thing in the act required to be done,” is made a misdemeanor, punishable “on conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed” by a fine of not exceeding five thousand dollars for each offense. Carriers are also made, by section 8 of the Act, liable in damages to the person or persons sustaining injury in consequence of such failure or omission, and under section 9 such person or persons may either make such injury and damage the ground of complaint to this Commission or bring suit for the recovery of the damages in any district or circuit court of the United States of competent jurisdiction. As to criminal prosecutions under section 10 of the Act, this Commission may apply to a district attorney of the United States to “institute in the proper court and prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of the Act and for punishment of all violations thereof;” and in case a person or persons injured by a violation of the Act elect to make com-

plaint to this Commission, it is made its duty by section 14 of the Act, after investigation, to recommend "what reparation, if any, should be made by the common carrier to the party or parties found to have been injured." It will be observed that it is only the "*willful*" failure or omission to comply with a requirement of the Act which is made a misdemeanor under section 10, and that under section 14, the Commission can only recommend reparation in cases of *injury* sustained from such omission or failure. The facts in this case do not show that the defendants "*willfully*" omitted or failed to notify this Commission of the advance in rates as required by the Act and to post notices to the public thereof as required by the order of this Commission, and there is no proof whatever of any damages or injury sustained by any one by reason of such failure or omission. There is, therefore, no case made for an application by the Commission to a district attorney for the institution of a prosecution and no ground for a recommendation of reparation for injury sustained. It may be further noted in this connection that a proposed advance in orange rates had been commented on in the Florida papers and was a matter of general notoriety throughout the State, and it is not probable that any one was damaged by the alleged failure to give the notice the exact length of time prescribed in the order of the Commission.

The important and difficult question is that raised by the charge that the advanced rates are in themselves unjust and unreasonable and therefore, in violation of section 1 of the Interstate Commerce Law. The facts bearing more or less directly on this question as disclosed by the testimony taken at the hearing and data on file with this Commission, are as follows:

1. Jacksonville, Callahan, Gainesville, Live Oak and Lake City are base points in Florida for the shipment of oranges to the northeastern cities, Baltimore, Philadelphia, New York, Boston and Providence, and the through rates from the "gathering points" to said cities are made up of the local rates to said base points, plus the through rates,



thence over the several lines described in the complaint to destination, and the freight is shipped on through bills of lading over said lines from the local or gathering points. The rates from all these base points are the same to each of said points of destination. These rates, prior to November 23, 1890, were from said base points to New York as follows: By the Clyde Line, the Mallory Line, and the line composed of the Savannah, Florida & Western Railway and the Ocean Steamship Company, 30 cents per standard box of 80 pounds; by the Atlantic Coast Line,  $37\frac{1}{2}$  cents per standard box; and by the Atlantic Coast Dispatch Line (all rail), 43 cents per standard box. The rates by said lines to said other cities were in proportion to those to New York, being less to Baltimore and Philadelphia, and greater to Providence and Boston.

2. In November, 1890, an advance of 10 cents on the above rates to all northeastern points was made to become effective on the 23d of that month. By this advance the rates from the base points to New York by the first three lines above mentioned became 40 cents per box; by the Atlantic Coast Line  $47\frac{1}{2}$  cents, and by the Atlantic Coast Dispatch Line 53 cents; and the rates to said other cities were equally increased. At a prior meeting of the managers and traffic agents of the lines this advance in rates could not be agreed upon, and it was referred to their respective presidents, by whom it was finally adopted and ordered to be put in force. The increased rates have been charged and received by all the lines since November 23, 1890.

3. The following tables show the rates which had prevailed from Jacksonville (and presumably from the other base points) *via* Savannah and steamship, Savannah and the Atlantic Coast Line and Savannah and the Atlantic Coast Dispatch Line, to Baltimore, Philadelphia, New York and Boston, from the initial dates named therein to November 23, 1890:



RATES ON ORANGES FROM JACKSONVILLE, FLA., TO POINTS NAMED VIA SAVANNAH AND A. C. D., ALL RAIL.

To Baltimore.		Philadelphia.		New York.		Boston, Mass.		Taking Effect.
Bx.	Brl.	Bx.	Brl.	Bx.	Brl.	Bx.	Brl.	
.40	.80	.40	.80	.40	.80	.40	.80	Dec. 6, 1887.
.40	.80	.41	.81	.43	.85	.49	.98	Oct. 1, 1888.
.40	.80	.41	.81	.43	.85	.49	.98	Sep. 21, 1889.
.50	1.00	.51	1.02	.53	1.06	.59	1.18	Nov. 23, 1890.

RATES ON ORANGES FROM JACKSONVILLE, FLA., TO POINTS NAMED VIA SAVANNAH AND A. C. L., RAIL AND WATER.

To Baltimore.		Philadelphia.		New York.		Boston, Mass.		Taking Effect.
Bx.	Brl.	Bx.	Brl.	Bx.	Brl.	Bx.	Brl.	
.60	1.20	.60	1.20	.60	1.20	.65	1.30	Oct. 15, 1883.
.50	1.00	.50	1.00	.50	1.00	.60	1.20	Dec. 7, 1883.
.50	1.00	.50	1.00	.50	1.00	.60	1.20	Dec. 22, 1883.
.30	.60	.30	.60	.30	.60	.45	.80	Oct. 15, 1884.
.40	.80	.40	.80	.40	.80	.54	.96	Jan. 12, 1885.
.40	.80	.40	.80	.40	.80	.54	.96	Sept. 13, 1885.
.40	.80	.40	.80	.40	.80	.54	.96	Sept. 15, 1886.
.40	.80	.40	.80	.40	.80	.40	.60	Nov. 1, 1886.
.35	.70	.35	.70	.35	.70	.35	.70	Nov. 30, 1886.
.35	.70	.35	.70	.35	.70	.35	.70	Sept. 1, 1887.
.35	.70	.35	.70	.35	.70	.38	.76	Oct. 1, 1888.
.35	.70	.35	.70	.35	.70	.38	.76	Sept. 20, 1889.
.37½	.75	.37½	.75	.37½	.75	.40½	.81	Oct. 15, 1889.
.47½	.95	.47½	.95	.47½	.95	.50½	1.01	Nov. 23, 1890.

RATES ON ORANGES FROM JACKSONVILLE, FLA., TO POINTS NAMED VIA SAVANNAH AND STEAMSHIP.

To Baltimore.		Philadelphia.		New York.		Boston, Mass.		Taking Effect.
Bx.	Brl.	Bx.	Brl.	Bx.	Brl.	Bx.	Brl.	
.50	1.00	.50	1.00	.50	1.00	.50	1.00	Oct. 3, 1881.
.50	1.00	.50	1.00	.50	1.00	.50	1.00	Oct. 15, 1883.
.50	1.00	.50	1.00	.50	1.00	.50	1.00	Nov. 15, 1883.
.30	.60	.30	.60	.30	.60	.30	.60	Oct. 6, 1884.
.40	.80	.40	.80	.40	.80	.40	.80	Jan. 12, 1885.
.40	.80	.40	.80	.40	.80	.40	.80	Sept. 7, 1885.
.40	.80	.40	.80	.40	.80	.40	.80	Sept. 15, 1886.
.30	.60	.30	.60	.30	.60	.30	.60	Nov. 18, 1886.
.30	.60	.30	.60	.30	.60	.30	.60	Sept. 1, 1887.
.30	.60	.30	.60	.30	.60	.30	.60	Sept. 15, 1887.
.30	.60	.30	.60	.30	.60	.35	.70	Sept. 20, 1889.
.40	.80	.40	.80	.40	.80	.45	.90	Nov. 23, 1890.

From these tables it appears that, for the most part, the rates immediately preceding those of November 23, 1890, had been in force about four years. It is claimed by the

defendants that these rates did not compensate them for the service rendered, and in explanation of the fact that they were so long maintained, W. P. Hardee, General Freight Agent of the Savannah, Florida & Western Railway Company, testified that the 30-cent rate by the first three lines was a war rate made on account of the water line from New York to Jacksonville, established in 1886, and that it remained in force for about four years because of a "misunderstanding of the lines regarding those rates." C. D. Owen, Traffic Manager of the Plant System, testified, however, in reference to the long continuance of these rates, that there was much depression in business over Florida during the four years from November, 1886, to November, 1890, resulting from a freeze in January, 1886, and the yellow fever epidemic in 1887, which was not declared off until December, 1888, and that because of such business depression it was not deemed advisable to raise the rates during that period.

4. The orange crops for said years have steadily increased in volume, being as follows:

Season of 1886-87.....	1,260,000 boxes.
“ 1887-88.....	1,500,000 “
“ 1888-89.....	1,950,000 “
“ 1889-90 .....	2,150,000 “

The testimony is to the effect that the crop of 1890-91 will be larger than that of the preceding season.

The raising of oranges is becoming each year more expensive on account of the increasing demand for fertilizers as the lands grow older. The planting of new groves is more expensive than formerly, because young trees for grafting have now to be bought from nurseries, whereas they could be obtained originally from the large growth of wild oranges.

The orange crop is an uncertain one to the individual grower in consequence of the liability to injury from cold and the ravages of insects; but the volume of the aggregate crop is constantly increasing, and will doubtless continue to increase, because of the planting of new groves, and because the groves already planted increase in productiveness and value as they grow older.

The rate on oranges per box in carloads from Jacksonville to Chicago is 60 cents per box, and the distance 1,030 miles. The distance to New York is 1,075 miles. The shipment of oranges from Jacksonville to Chicago is small as compared with that to New York, and there is no evidence as to the relative conditions in other respects of the transportation of oranges to said two points. The carload rate on oranges from Los Angeles, Cal., to all points east of the Missouri River is \$1 per box, the same rate prevailing to New York as to Chicago. The distance to Chicago is about 2,265 miles, and to New York about 3,180 miles.

5. The price of the orange fluctuates with the quantity produced, and the tendency of increased production is to reduce the price. The evidence as to the market value of oranges is very indefinite and unsatisfactory. The average price during the season of 1889-90, as stated by the manager of the Florida Fruit Exchange, was \$1.52 per box after deducting transportation charges and commissions. From this must be deducted the cost of cultivation, wrapping and all expenses for putting the fruit on the car, which is estimated by an orange grower (Delano) at 80 cents per box. This would leave a profit of 72 cents per box, exclusive of interest on investment and other charges not included in above estimate. The commissions now charged are 8 per cent. on gross sales, and the selling price of a box, in order to net \$1.52, after deducting commissions and transportation charges must be about \$2. The orange season begins about the first of October and runs through October, November, December and January, when it begins to fall off. The heaviest months are December and January. The average weight of a box is 80 pounds, and the average number in a box 150.

6. About two-thirds of the Florida orange crop goes east to Baltimore, Philadelphia, New York, Providence and Boston, and one-third west to Cincinnati, Chicago and other western points. The bulk of the shipments go by the lines leading out of Gainesville, Callahan, Jacksonville and Fernandina.

The following is the number of tons of the principal arti-

cles transported by the Savannah, Florida & Western during the year ending June 30, 1890, according to the statement of W. P. Hardee, General Freight Agent of that road:

	Tons.
Oranges. ....	64,285
Melons. ....	21,983
Fruits and Vegetables. ....	22,408
Cotton. ....	62,057
Grain, Flour and other Mill Products. ....	81,549
Fertilizers. ....	65,652
Hay and Fodder. ....	15,212
Lumber and Wood. ....	358,672
Naval Stores. ....	136,121
Stone, Sand and other like articles. ....	19,998
Cement, Brick and Lime. ....	13,071
Other articles. ....	238,452
Total. ....	1,099,460

According to this statement the tonnage of oranges on that road exceeded that of cotton by 2,228 tons, and was about three-fourths of the orange crop of that year.

There are twenty-five boxes (80 pounds each) to a ton, and 64,285 tons would be 1,607,125 boxes. At the old rate of 30 cents the revenue from that number of boxes would be \$482,137.50, or \$7.50 per ton. From tariffs issued by the Savannah, Florida & Western Railway Company on file with this Commission, effective October 3, 1889, it appears that the rates on cotton from Callahan, Jacksonville, Live Oak and Lake City, Florida, to New York *via* steamship, were then not quite twice as much per ton as those on oranges; but a tariff recently filed, taking effect September 12, 1891, makes a rate on cotton which is only about 20 per cent. higher than the 40-cent rate on oranges. The gross value of a ton of oranges at \$2 per box is \$50, while that of a ton of cotton is from \$180 to \$200.

It was stated by G. M. Sorrel, manager of the steamship line from Savannah, that a ton of cotton (whether compressed or uncompressed does not appear) occupies about twice as

much space as a ton of oranges, but that the best part of a ship—that best ventilated—must be reserved for oranges, and their handling is expensive, while cotton can be carried anywhere and handled in any way.

7. In transporting oranges by rail a ventilated car is required, but the cars in actual use are ordinary box cars with gratings. There is nothing in the character of orange cars which prevents their use for other freight. The busy season with the carriers from and to Florida points is in the winter, and the increase of business consists principally in the shipment north of cotton, oranges and other fruit. More freight also comes from the north in winter than at any other season. The freight coming south *via* Portsmouth and Norfolk and *via* the all-rail line is comparatively small, but more or less comes by the Ocean Steamship Company *via* Savannah. As to the lines from Florida points of the Savannah, Florida & Western Railway and Ocean Steamship Company, cars carrying oranges north generally return loaded. Most other orange cars return south empty. There is a through train, known as No. 208, on the all-rail line from Jacksonville to New York, which is practically an exclusive orange or “perishable freight” train; the other trains carrying oranges take other freight, and sometimes in the same cars with oranges. Train No. 208 was put on in 1887, and ran from 1887 to 1890 under the old freight rates. The speed of the “perishable” freight train is about 18 miles an hour, while the ordinary schedule is from 12 to 14 miles, and the “perishable” train has the right of way over other freight trains. On the orange or “perishable” traffic the movement is at a higher rate of speed, and there is a smaller average loading than of other freight, while to attain the necessary speed the number of cars to a train is limited. The increased speed causes a larger consumption of coal, and in other ways somewhat enhances the cost of transportation.

On the arrival of the “perishable” freight train in Jersey City for New York delivery, the labor detailed at that station stops handling other freight and give “the perishable freight” special attention. The cars are run on floats from the Jersey

side of the river and brought to the pier on the New York side, where the freight is unloaded in what are called "consignees' stores," which are given to the trade free of rent. Pier 29, which covers about 50,000 square feet, and the shedding of which cost the Pennsylvania Company \$45,000, is devoted exclusively to the "perishable" traffic, and consignees use it as their sales-room without charge. For the "perishable" freight the force comes on at 7 P. M., and a night force of watchmen and clerks is required. There is also an expenditure for gas. The "perishable" freight is ready for delivery at midnight, while for ordinary freight the gates are not opened until 7 o'clock in the morning. Train No. 208 is made up so that freight for New York is nearest the engine, and next that for Newark, Philadelphia, Wilmington, Baltimore and Washington in the order named. The trains are tendered the Pennsylvania line in this order at Richmond, and this equalizes to some extent the terminal service performed by that line at New York.

8. The facilities for handling the orange business have been much improved of late, and there is now little or no fault found with the carriers in that respect. A faster ship, the *Kansas City*, which cost \$500,000 and makes 16 knots an hour, has been put on by the steamship line from Savannah. The Ocean Steamship Company have set aside one-half of one of their piers in New York, rented at from \$40,000 to \$45,000 per annum, for the special care of oranges, and steam has been introduced so as to keep them warm in cold weather. This special provision for the care of oranges was made with a view of bringing business to that line, and no charge is made for it. There has been also an increase of platforms at Jacksonville and other points for the "perishable" freight service. At Wilmington a special yard for "perishables" was constructed two seasons ago at a cost of from \$15,000 to \$18,000, for handling the business and inspecting the trains at that point, and at Richmond the roads have just completed a track around the city at a cost of \$150,000. This expense at Richmond was necessitated by the heavy grade of 120 feet, which prevented the handling of fast freight there in

less than three hours. Other freight besides “perishables” are hauled over this improvement, and it is an addition to the general facilities of the road.

9. The following tables are compiled from data furnished by the carriers and on file in the auditor’s office of this Commission. The first relates to the all-rail line (Atlantic Coast Dispatch Line) and shows the through rates on oranges by that line from Florida “base points” to the northeastern cities named, and the rate *per ton per mile* both under the rates in force at the date of the advance and also under the advanced rates, and the divisions of the advanced rates between the different portions of the line. The second gives the through rates, old and new, and divisions of the new on the rail and water line *via* Portsmouth, and the third, the through rates *via* Savannah and steamship. There are no data showing the rate per ton per mile except on the all-rail line, as the mileage by water is not estimated, and there is no division of the rate *via* Savannah and steamer.

ALL RAIL. RATES ON ORANGES. IMMEDIATELY PRECEDING NOVEMBER 20, 1890, AND TO PRESENT DATE.

To From:	Baltimore.				Philadelphia.				New York City.				Boston, Mass, Providence, R.I.			
	Mileage.	Per Box.	Per Barrel.	Rate per ton per mile.	Mileage.	Per Box.	Per Barrel.	Rate per ton per mile.	Mileage.	Per Box.	Per Barrel.	Rate per ton per mile.	Mileage.	Per Box.	Per Barrel.	Rate per ton per mile.
Jacksonville, Florida,																
Callahan, "																
Live Oak, "																
Gainesville, "																
Lake City, "																
S., F. & W. Ry. Tariff)																
Season 1889 & 1890..	889	40	80	1.1	985	41	81	1.04	1075	43	85	1	1288	49	98	0.95
Issued Dec. 5, 1889...)																
S., F. & W. Ry. Tariff)																
November 23, 1890...)	889	50	100	1.38	985	51	102	1.29	1075	53	106	1.23	1288	59	118	1.14
S., F. & W. Ry. Tariff)																
Season 1890 & 1891..	889	50	100	1.38	985	51	102	1.29	1075	53	106	1.23	1288	59	118	1.14
Issued Dec. 18, 1890..)																
	Divisions.				Divisions.				Divisions.				Divisions.			
S., F. & W. Railway. .	18	37.5			18	37.5			18	37.5			18	37.5		
A. C. Despatch to Rich-	23	44.5			22	42.5			22	42.5			21.5	41.5		
mond or Portsmouth.																
North .....	9	18			11	22			13	26			19	5	39	
Total.....	50	100			51	102			53	106			59	118		

*Note.*—Mileage given above is from Jacksonville. Divisions apply from Jacksonville and Callahan only.

RAIL AND WATER, *via* PORTSMOUTH, OR PINNER'S POINT. RATES ON ORANGES.  
IMMEDIATELY PRECEDING NOV. 23, 1890, AND TO PRESENT DATE.

		Boston, Mass.							
		Balto., Md.		Phila. Pa.		N. Y. City.		Prov., R. I.	
From—	To								
Jacksonville, Fla.									
Callahan, "		Per Box	Per Barrel	Per Box	Per Barrel	Per Box	Per Barrel	Per Box	Per Barrel
Live Oak, "									
Gainesville, "									
Lake City, "									
S., F. & W. Ry. Tr'ff, Season									
'89 & '90. Issued Dec. 5, '89.		37.5	75	37.5	75	37.5	75	40.5	81
S. F. & W. Ry. Tr'ff, Nov. 23, '90		47½	95	47½	95	47½	95	50½	1.01
S., F. & W. Ry. Tr'ff, Season									
'90 & '91. Issued Dec. 18, '90.		47½	95	47½	95	47½	95	50½	1.01
		Divisions.		Divisions.		Divisions.		Divisions.	
S., F. & W. Ry.....		18	37.5	18	37.5	18	37	18	37.5
A. C. Line, Savannah to Pin-									
ner's Pt. or Portsmouth.		24.2	47	22.8	44.3	22.8	44.3	23.2	45.8
Steamer.....		5.3	10.5	6.7	13.2	6.7	13.2	9.3	18.2
Total.....		47½	95	47½	95	47½	95	50½	101

Via SAVANNAH AND STEAMER. RATES ON ORANGES. IMMEDIATELY PRECED-  
ING NOV. 23, 1890, TO PRESENT DATE.

		Balto.,		Phila.,		N. Y.		Boston.	
		Md.		Pa.		City.		Prov., R. I.	
FROM :	TO								
Jacksonville, Fla.,									
Callahan, "		Per Box	Per Barrel	Per Box	Per Barrel	Per Box	Per Barrel	Per Box	Per Barrel
Live Oak, "									
Gainesville, "									
Lake City, "									
S., F. & W. Tariff, Season 1889									
and 1890, issued Dec. 5, 1889.		30	60	30	60	30	60	35	70
S., F. & W. Ry. Tr'ff, Nov. 23, '90		40	80	40	80	40	80	45	90
S., F. & W. Ry. Tr'ff, Season 1890									
and 1891, issued Dec. 18, 1890.		40	80	40	80	40	80	45	90

10. The following statement, in reference to freight in general, of average receipts per ton per mile, and estimated cost of carrying a ton a mile, for the years ending June 30, 1889, and 1890, is taken from the report of the carriers named therein on file in the office of the Statistician of this Commission :



ROAD.	AVERAGE RECEIPTS PER TON PER MILE.				ESTIMATED COST OF CARRYING A TON A MILE.			
	1889.		1890.		1889.		1890.	
	Cts.	Mills.	Cts.	Mills.	Cts.	Mills.	Cts.	Mills.
Atlantic Coast Line Assoc'n, reporting for N. E. R. R. of S. C., Wil. & Wel. R. R., Wil., Col. & Aug. R. R., Pe- tersburg R. R. and Rich- mond & Petersburg R. R.	1	824	1	593	1	015	...	798
Charleston & Savan'h R. R.	1	397	1	201	...	862	...	694
Florida Cent. & Pen. R. R....	1	508	1	554	1	097	1	290
Pennsylvania R. R.....	...	685	...	661	...	486	...	457
Alexandria & Fred. Ry.....	...	834	...	746	...	920	...	891
Alexandria & Wash. R. R....	...	...	...	973	...	...	...	909
Washington South. Ry.....	...	...	...	746	...	...	...	752
Balto. & Potomac R. R.....	1	389	1	326	1	182	1	197
Phil., Wil. & Balto. R. R....	1	517	1	356	1	231	1	098
Rich., Fred. & Potomac R. R.	1	152	1	040	...	962	...	828
Sav., Fla. & Western Ry....	1	588	1	378	1	135	...	965
Seaboard & Roanoke R. R....	2	115	1	982	1	129	1	038

(Note.—The report of the Alexandria & Fredericksburg Railway and the Alexandria & Washington Railroad is, as to 1890, for the nine months ending March 31 of that year; of the Alexandria & Washington Railway for 1889, is included in that of Alexandria & Fredericksburg Railway; and of the Washington Southern Railway is for the three months ending June 30, 1890.

11. The Savannah, Florida & Western Railway is a part of the last three lines mentioned in the complaint, and as the initial road has the burden of assorting, loading and billing about 60 per cent. of the orange freight received at Jacksonville. Under the division of the new through rate that road receives 18 cents per box for 172 miles transportation, which is a rate of 2.6 cents per ton per mile, and largely in excess of that received by the other roads.

If the through rates were divided on a mileage basis the proportion of the other roads would be increased. For example, the through rate of 53 cents per box on the all-rail line from Jacksonville to New York is divided so as to give the following rates per ton per mile on the different portions of the line:

Savannah, Florida & Western Railway, 172 miles, 2.6 cents per ton per mile.

Charleston & Savannah, 115 miles, .89 cts. per ton per mile.  
Charleston to Richmond, 443 miles, 1 cent per ton per mile.  
Richmond to New York, 345 miles, .94 cts. per ton per mile.

The rate per ton per mile from Jacksonville to New York under the old rate, 43 cents per box, was 1 cent, and under the new rate is 1.23 cents.

From these figures it appears that, with the exception of the Savannah, Florida & Western Railway, none of the roads composing the all-rail line receive more per ton per mile under the new rate than they would have received on a division of the old rate on a mileage basis, and the roads from Charleston to Savannah and from Richmond to New York receive less.

It will be noted that the Washington Southern Railway Company, the Baltimore & Potomac Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company, the Pennsylvania Railroad Company, and the Richmond, Fredericksburg & Potomac Railroad Company in their answers only deny that their "*proportions*" of the through rate prior to the advance afforded ample compensation for the service rendered.

Of the old rate of 43 cents per box by the all-rail line from Jacksonville to New York, the proportion of the Savannah, Florida & Western Railway was 13 cents for 172 miles, which was 1.88 cents per ton per mile. As that road receives 18 cents under the new rate, it is seen that one-half of the advance is given to it on 172 miles of the line, while to the whole remainder, 903 miles, is allotted the other half. The addition of 5 cents to the proportion of the Savannah, Florida & Western for 172 miles is an increase of .72 cents per ton per mile, which, added to the 1.88 cents received under the old rate, makes the present rate 2.6 cents per ton per mile. The proportion of the Savannah, Florida & Western was the same by the all-rail and by the rail and water lines from Jacksonville, Callahan, etc., to New York, viz., 13 cents at the old rates, and remains the same by both routes, viz., 18 cents at the new rates, and this proportion prevails as to the other northeastern cities. That road, therefore, receives half of

the advance on all said lines between said points, and about the same proportion from the other base points.

While the complainant has no interest in the division the defendants make between themselves, and that division does not determine what the charge to the public should be, yet "it is not without significance in determining what are reasonable rates for the whole distance on the lines in question." (Brady v. Penn. R. R. Co., 2 I. C. C. Rep. 131; 2 Inters. Com. Rep. 78.)

The Savannah, Florida & Western already had a proportion of the through rate largely in excess of that of the other carriers associated with it, and the disproportion is made still greater by the allotment to it of half the entire advance in rates. Under its proportion of the old rate it received 1.88 cents per ton per mile, and according to its report, *supra*, the estimated cost of carrying a ton of freight a mile in general over its line was, for the year ending June 30, 1890, .965 cents. Deducting the latter from the former and there is left .915 cents (over 9 mills) as the excess of the rate per ton per mile under the old rate over the estimated cost of its general transportation. Making the same deduction from the rate per ton per mile, 2.6 cents received under the advanced rate, and there is left 1.63 cents as the excess of the present rate over the cost of transportation in general.

The transportation of oranges, it is true, receives special care and attention from the defendants. Cars and steamers are ventilated; trains are run on fast schedules which limit the number of cars and increase the consumption of coal, and extra accommodations and employes are provided at shipping, junction and terminal points. Moreover, most of the cars engaged in this traffic by the all-rail lines return empty, and the cars carrying oranges north are not loaded to their full capacity, the average load not exceeding 19,000 pounds. The service, therefore, is more expensive than that rendered in connection with ordinary freight. But the rate per ton per mile of the Savannah, Florida & Western, under the old rate, was much higher than its average receipts per ton per mile on freight in general. According to its report for the year ending June 30, 1890, that average was 1.378

cents, while its rate on oranges was 1.88 cents, a difference of over 5 mills in favor of the latter. It appears that this company has not paid dividends for some time, but has been an interest-paying road, and there is no reliable evidence that the orange traffic was unremunerative under the old rates. The traffic manager of the Plant System states that his opinion, that the orange traffic of the Savannah, Florida & Western was unremunerative, was based on the fact that the owners said so, and not on personal knowledge of its capital or its general net revenue. It will be observed, also, that the estimated cost of carrying a ton a mile over the line of that road, according to its report, decreased from 1.135 cents in 1889 to .965 cents in 1890.

The fact that the rates immediately preceding the advance had for the most part continued in force for about four years, unless a satisfactory explanation is made of the long acquiescence of the carriers therein, raises a presumption that they were reasonable—at least, so far as the carriers are concerned. (*In re Rates on Food Products*, 4 I. C. C. Rep. 48; 3 Inters. Com. Rep. 93.)

It is stated that these rates were originally war rates on account of the establishment in 1886 of a water line from New York to Jacksonville, and that they were continued in force for so long a time because of a "misunderstanding of the lines" regarding them, and on account of business depression in Florida, resulting from a freeze in January, 1886, *about ten months before the rates were adopted*, and yellow fever epidemic in 1887, which was "declared off" in December, 1888, *about two years before the advance rates were put in force*. The alleged business depression does not appear to have affected the production of oranges, as it steadily increased during each year of the period in which the old rate was in force.

Moreover, it does not appear that the rapid service and special agencies employed in the carriage of oranges are necessarily required by the nature of the commodity. While spoken of as "perishable" in the testimony of the carriers, it is evident that this characterization is correct only to a limited extent. As is well known, oranges in considerable quan-

ties are shipped by rail across the continent, and brought here also in numerous cargoes by slow vessels from the Mediterranean and other countries. It is an exceptionally hardy fruit, and well adapted to long transportation. The shipment is made in packages of convenient size for safe and rapid handling, while in weight, as compared with bulk, it furnishes a relatively high tonnage for the space occupied. In general desirability as freight it differs widely from those more delicate and short-lived products which must be speedily consumed after they are gathered, and which, from their inherent qualities, are ordinarily rendered valueless by accident or delay in transit. Therefore, the special facilities provided by the defendants for the transportation of perishable freight can hardly be claimed, so far as the orange traffic is concerned, to have been added to their general equipment solely because that traffic of necessity demanded high-speed trains and unusual conveniences of delivery. The more probable reason is found in the competition between the different lines and their desire to secure a business so important in volume and so desirable in character. The orange trade from Florida, doubling as it appears to have done in the four years preceding the advance in rates, and giving indications of much greater development in the future, naturally attracted the attention of the carriers and prompted rivalry in the inducements offered to shippers. While these special facilities were a manifest advantage to the producer, the extra expenses which they occasioned were voluntarily assumed in competing for the business, and though entitled to fair consideration, cannot be accorded a controlling relation to the rate in question.

It is also to be observed that these added appliances were for the most part put in use long before the advance complained of, and were obviously valuable to the carriers in expediting and increasing their general business.

Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years standing and the advance is great, ranging, as in this case, from about 20 to 33½ per cent. of the old rate, and the traffic affected is of

large and constantly increasing volume and of vital importance to a large section of country.

No definite and reliable data are furnished as to the actual cost to the carrier of the orange traffic. The general manager of the Atlantic Coast Line testified that "there are no special means of estimating it," but he gives the cost on his line as within a small fraction of eight mills per ton per mile. The old rate amounted to 1 cent per ton per mile to New York on the all-rail line (the Atlantic Coast Dispatch), which is the only line on which the mileage rate is computed, the other lines being all or partly water. This rate of 1 cent per ton per mile is below the average of receipts on that line on freight in general, as appears from the table in reference thereto above given. The roads composing the all-rail line (exclusive of the Savannah, Florida & Western) have accepted, as before stated, five cents as their share of the increased rate, and that road already had a proportion of the old rate equivalent to 1.88 cents per ton per mile, which was considerably in excess of its average freight receipts.

It is not, however, our intention to determine the apportionment between the several carriers of the through rate which is deemed reasonable, nor to decide that the reduction which we feel called upon to order shall, so far as rail transportation is concerned, affect only the road receiving half the advance which was, as we understand, agreed upon by all the defendants. We leave the various companies free to make such division of the aggregate charge sanctioned by us as they may agree upon among themselves.

Our conclusion is, after the most careful consideration of the facts and circumstances disclosed by this investigation, that while some increase in the rates prevailing prior to November 23, 1890, was fairly warranted, the advance made at that date of 10 cents a box was without justification and unlawful. That advance, in our judgment, and we so decide, should not have exceeded 5 cents per box, and, so far as it was in excess of that amount, was unreasonable and contrary to law. It may be that a large addition to the present volume of traffic, improved methods of operation reducing the cost of transportation, and other causes will in the near

future make the rate now allowed excessive, but in view of the whole situation as it appears to us at present, we hold that no greater reduction than five cents per box should now be required.

The order of the Commission is that the defendants and each of them be and they are hereby notified and required to forthwith cease and desist from charging or collecting for the transportation of oranges and lemons any greater sum than an addition of 5 cents per box to the rates in force prior to the advance on November 23, 1890; that all sums collected by the defendants for such transportation since that date in excess of the rates hereby allowed be and they are hereby determined and adjudged to have been unreasonably and unlawfully received; and that the defendants and each of them be, and they are hereby notified and required to make reparation for the injuries occasioned by such unreasonable and unlawful rates by refunding to the several persons entitled thereto, within sixty days after demand therefor, all sums received by them for such transportation in excess of an addition of 5 cents per box to the rates in force prior to the advance of November 23, 1890.

Inasmuch as the persons who have paid such illegal charges are not parties to this proceeding, and the amounts wrongfully received from them respectively cannot be ascertained from the evidence already taken, the proceeding will be continued for such further action or inquiry in that behalf as may become necessary.



LEHMANN, HIGGINSON & COMPANY *v.* THE TEXAS  
& PACIFIC RAILWAY COMPANY, THE MIS-  
SOURI, KANSAS & TEXAS RAILWAY COMPANY,  
AND GEORGE A. EDDY AND H. C. CROSS, RECEIVERS  
OF SAID MISSOURI, KANSAS & TEXAS RAILWAY  
COMPANY.

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Decided November 30, 1891.

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1. A schedule of rates designated a "joint freight tariff" announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said Association "and connections." The Texas & Pacific Railway Company, a member of said Association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said Traffic Association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City. *Held*, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish, as provided by section 6 of the Act to regulate commerce, a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City over the roads of said Association, or of any one of them, in connection with any other road or roads. *Held further*, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.
2. Several railway companies forming a continuous through line carried certain traffic to the terminal point at a 30-cent rate and for the same rate to an intermediate point, and to a point on a branch line more distant than the said intermediate but less distant than said terminal point they maintained a rate of 42 cents on the like traffic. *Held*, That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch line point off the direct through line without unjust discrimination. *Held further*, That as to the branch line point the complainant was entitled to a refund of the amount paid in excess of a reasonable rate.

*E. A. Barber and H. C. Sluss*, for complainants.



*John S. Blair, R. S. Lovett and Robert Adams, for Texas & Pacific R'y Co.*

*Warner, Dean & Hagerman and John W. Montgomery, for Missouri, Kansas & Texas R'y Co., and the receivers thereof.*

REPORT AND OPINION OF THE COMMISSION.

MORRISON *Commissioner* :

Lehmann, Higginson & Company, a firm of wholesale grocers, composed of G. E. Lehmann, E. Higginson and John Wilcox, doing business at Humboldt, in the State of Kansas, represent that said Texas & Pacific Railway Company is a common carrier of persons and property in the States of Louisiana and Texas; that the said Missouri, Kansas & Texas Railway Company, of which said George A. Eddy and H. C. Cross are receivers, is a common carrier, operating lines of road in the States of Texas, Kansas, Missouri, and in the Indian Territory, and that said railway companies have a continuous and connecting line of road from New Orleans, Louisiana, to Humboldt, Kansas.

That the established rate of said companies on sugar in carloads is 30 cents per hundred pounds from New Orleans to points on the Missouri River in the State of Missouri, of which Missouri River points Kansas City is the nearest to, and St. Joseph the most distant from, New Orleans; that said railway companies charge complainants 42 cents per hundred pounds for sugar in carloads from New Orleans to Humboldt, 112 miles south and west of Kansas City, and charge only the Missouri River rate of 30 cents from New Orleans to Parsons, Kansas, 35 miles south and east of Humboldt.

That about six months before April, 1889, the defendant railway companies carried sugar for complainants from New Orleans to Humboldt at the Missouri River rate in force at the time, which was 30 cents or less, and that in the months of April and May, 1889, before this complaint was made, complainants purchased in New Orleans three carloads of sugar for shipment to Humboldt, which the defendants carried from New Orleans to Humboldt at the rate of 42 cents

per hundred pounds, and refused to carry for less, that being the amount of the through rate to Parsons and to the Missouri River, with the local rate of 12 cents from Parsons to Humboldt added.

The complainants aver that in making a greater rate to Humboldt than to the Missouri River the defendants discriminated against complainants to the extent of 12 cents per hundred pounds, amounting in the aggregate to \$131.24 on the three cars of sugar so purchased and shipped by them, and ask that defendants may be required to transport sugar from New Orleans to Humboldt at the Missouri River rate and to refund the amount of the said alleged overcharge.

The answer of the Texas & Pacific Railway Company admits that it is a common carrier, operating lines of road as stated by complainants, and that its co-defendant road is operated by said receivers and is a common carrier in the States and Indian Territory as stated by complainants. It admits that, with its co-defendant, it has established a rate of 42 cents per hundred pounds on sugar from New Orleans to Humboldt, which it avers is a just and reasonable rate.

"It denies that it has any contract or agreement with its co-defendant, or others, establishing a continuous line of railway from the city of New Orleans, Louisiana, to the city of Humboldt, Kansas," or that it has any contract, agreement or arrangement with its co-defendant or others, or has in any manner made or established rates, fares or charges of 30 cents per hundred pounds on sugar from New Orleans, Louisiana, to Parsons, Kansas, or any other rate on sugar between said points; and denies that it is in any respect bound by or a party to such rate made by others. It makes no answer as to whether it has or has not with its co-defendant established a rate of 30 cents per hundred pounds of sugar from New Orleans to Missouri River points, or as to what rate, if at any, it participates in business from New Orleans to Missouri River points.

The Missouri, Kansas & Texas Railway Company, answering by said receivers, admits that complainants are partners

in the wholesale grocery business at Humboldt, Kansas; that the Texas & Pacific Railway Company operates lines of road in Louisiana and Texas, and that the lines of said Texas & Pacific Railway Company and the Missouri, Kansas & Texas Railway Company form a continuous and connecting line from New Orleans to Humboldt; that Humboldt is 117 miles south and west of Kansas City and 35 miles north of Parsons, as alleged in the complaint, and that defendants did carry sugar to Missouri River points and to Parsons, Kansas, at 30 cents per hundred pounds, as alleged by complainants, but that they are not advised as to whether in former years defendant railway companies carried sugar from New Orleans to Humboldt at the Missouri River rate. They admit that the defendants refused to accept less than 42 cents on the hundred pounds of sugar from New Orleans to Humboldt, as alleged by complainants, but deny that this was unjust discrimination, or that the complainants are entitled to the relief prayed.

Answering further, said receivers, on behalf of the Missouri, Kansas & Texas road, aver that the Missouri River rates were, and are, made only to competitive points on said river, and apply only to intermediate points through which New Orleans and Missouri River business passes over the defendants' lines, and that Humboldt is not one of such points, but is on the Junction City branch line of the Missouri, Kansas & Texas Railway Company, and not on the line over which through business between New Orleans and Missouri River points is carried.

Besides the facts admitted these further facts are found on investigation :

The Texas & Pacific Railway Company operates a line of road from New Orleans, Louisiana, to and through Fort Worth, Texas, to El Paso. The main line of the Missouri, Kansas & Texas Railway Company extends from Hannibal, Missouri, to Nevada, Missouri, Parsons, Kansas, thence to and through the Indian Territory to Fort Worth and other points in Texas. The Junction City branch line of said Missouri, Kansas & Texas Railway Company extends from the

main line at Parsons to and through Humboldt to Junction City, Kansas.

The lines of the defendant companies thus form connecting lines from New Orleans to and through Fort Worth, Texas, and Parsons, Kansas, to Humboldt, Kansas, on the branch line, and to Nevada, Missouri, and other points on the main line of the Missouri, Kansas & Texas road, but neither of said companies operates any line of road reaching Kansas City or other so-called Missouri River point.

In the six months next before April and May, 1889, the complainants made occasional shipments of sugar in carloads over defendants' roads from New Orleans to Humboldt at the rate of 30 cents per hundred pounds, which was the rate at the time prevailing from New Orleans to Kansas City and other Missouri River points.

In April and May, 1889, the defendants refusing a lower rate, the complainants shipped over the roads of defendants from New Orleans to Humboldt three carloads of sugar at the rate of 42 cents per hundred pounds, the aggregate freight charge being \$131.24 in excess of the charges on like freight carried from New Orleans to Parsons or Kansas City. The sugar so carried was billed through by the Texas & Pacific Railway Company, and passed over its road from New Orleans to Fort Worth, 547 miles; thence over the main line of the Missouri, Kansas & Texas Railway Company, 360 miles to Parsons; thence 35 miles over the branch line of said Missouri, Kansas & Texas Railway Company to Humboldt.

In the months of April and May, 1889, when complainants were being charged by the defendants 42 cents to Humboldt on the 100 pounds of sugar, the defendants, in connection with the Missouri Pacific road, were carrying sugar to Kansas City and other Missouri River points for 30 cents per hundred pounds, the sugar being routed and passing over the Texas & Pacific road, 547 miles from New Orleans to Fort Worth; thence 439 miles over the main line of the Missouri, Kansas & Texas road, through Parsons, Kansas, to Nevada, Missouri; thence 94 miles over the line of the Missouri Pacific Railway to Kansas City.

When the defendants, in connection with the Missouri Pacific Railway Company, were so carrying sugar from New Orleans to Kansas City over a continuous line operated by these several companies they had not, as provided in section 6 of the Act to regulate commerce, established and filed with the Interstate Commerce Commission any joint tariff of rates and charges.

The Texas & Pacific Railway Company had issued, published and filed with the Commission tariffs of rates on sugar, of which the following are copies :

N. O. T. A. 1157.

### JOINT FREIGHT TARIFF.

- (A) Illinois Central Railroad,
- (B) Louisville & Nashville Railroad,
- (C) Louisville, New Orleans & Texas Ry.,
- (D) Mobile & Ohio Railroad,
- (E) Queen & Crescent Route,
- (F) Texas & Pacific Railway,
- (G) Southern Pacific Co.,—Atlantic System,  
and connections.

*Issued Feby. 11, 1889.*

*Effective Feby. 21, 1889.*

#### *Rate of Transportation.*

FROM NEW ORLEANS, La.,

To

Kansas City Mo.	Nebraska City, Neb.
Atchison, Kan.	Omaha, Neb.
Leavenworth, Kan.	Council Bluffs, Ia.
St. Joseph, Mo.	Lincoln, Neb.
Plattsmouth, Neb.	Falls City, Neb.

#### *ON SUGAR.*

*In C. L. 24,000 lbs. and over, 30  
cents per 100 lbs.*

Rates to stations on the K. C. F. S. & M. R. R. and K. C. C. & S. Ry. will *not exceed the rate shown above.*

Transfers over the Ohio & Mississippi Rivers are included in *above rate.*

The above named rate will prevail *via* lines above *designated by letters A. B. C. D. E. & F. only.*

Revokes N. O. T. A. 961, corrected, and all other conflicting rates.

D. B. MOREY, G. F. A., I. C. R. R. New Orleans, La.	E. W. HOW, G. F. A., L. N. O. & T. Ry. Memphis, Tenn.	R. X. RYAN, G. F. A., Q. & C. Route. Cincinnati, O.
THEO. WELCH, G. F. A., L. & N. R. R. Montgomery, Ala.	H. S. DEPEW, T. M., M. & O. R. R. St. Louis, Mo.	E. H. HINTON, G. F. A., T. & P. Ry. Dallas, Tex.
J. G. SCHRIEVER, T. M., So. Pac. Co., New Orleans.		

For further information apply to

J. G. MOREY, C. A., I. C. R. R.	R. F. REYNOLDS, C. A., L. N. O. & T. Ry.	A. F. BARNETT, D. F. A., Q. & C. Route.
D. C. ROBERTS, G. A., L. & N. R. R.	R. C. PERKINS, G. A., M. & O. R. R.	H. C. REESE, C. A., T. & P. Ry.
C. W. BEIN, A. G. F. A., So. Pac. Co., New Orleans, La.		

## THE TEXAS & PACIFIC RAILWAY.

### THE CROMWELL PACIFIC THROUGH LINE.

#### Traffic Department.

Dallas, 2, 26.

Supplement No. 16 to J. B. No. 136.

Please refer to J. B. No. 136 and amend as follows:

\* \* \* \* \*

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Effective Feby. 21st, 1889.

#### ON SUGAR.

In Carloads 24,000 lbs., and over.

Per 100 lbs.,

30 cents.

N. O. T. A. 1157.

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Attach to J. B. 136 and make part of same. Cancels conflicting supplements.

G. H. TURNER,  
A. G. F. A.  
E. A. S.

E. H. HINTON,  
G. F. A. (Oliver)  
Dallas.

Neither the Missouri, Kansas & Texas Railway Company nor the Missouri Pacific Railway Company was a party to the said tariff N. O. T. A. 1157, issued by said Texas & Pacific and other companies February 11, 1889, or to the supplement thereto effective February 21, 1889.

A division of the through freight charges on sugar from New Orleans to Kansas City, to Parsons and to Humboldt, respectively, among the carriers in proportion to the distance over their respective roads would give to the Texas & Pacific for the 547 miles distance from New Orleans to Fort Worth—

	Cents.
When carrying to Kansas City at 30 cents.....	15.195
“ “ Humboldt at 42 cents.....	24.890
“ “ Humboldt at 36 cents.....	20.905
“ “ Parsons at 30 cents.....	18.095

The share of the Missouri, Kansas & Texas for the respective distances over its road from Fort Worth to—

	Cents.
Nevada, 439 miles, when carrying to Kansas City at 30 cents.....	12.195
Parsons, 360 miles, when carrying to Parsons at 30 cents.....	11.905
Humboldt, 395 miles, when carrying to Humboldt at 42 cents .....	17.610
Humboldt, 395 miles, when carrying to Humboldt at 36 cents.....	15.095

The share of the Missouri Pacific for its distance from Nevada to Kansas City, 94 miles, when carrying from New Orleans to Kansas City at 30 cents rate, 2.610 cents.

The local rates of said railway companies on sugar per 100 pounds are—

	Cents.
Texas & Pacific, New Orleans to Fort Worth.....	62
M. K. & T., Ft. Worth to Parsons, to Humboldt, or to Kansas City.	65
Missouri Pacific, Nevada to Kansas City.....	15

Since the hearing or trial of this case several changes have

been made in the rates at which the Texas & Pacific and other roads composing the New Orleans Traffic Association were offering to carry sugar from New Orleans to Kansas City and other Missouri River points as well as to interior points in the State of Kansas. As a result of these changes, a rate in the year 1890 to Missouri River points sometimes as low as 27 cents, and once as low as 22 cents, prevailed. Said association published a tariff—1445 N. O. T. A.—announcing a rate of 36 cents on sugar from New Orleans to Humboldt, which was effective during several months next before September 11th, 1890.

The several rates and changes in rates so made and published by said Traffic Association since this case was heard were by the Missouri, Kansas & Texas Railway Company published as applicable over its road to Humboldt.

Said association, including the Texas & Pacific Railway Company had published a rate of 30 cents to Kansas City and Missouri River points, and the Missouri, Kansas & Texas Company, by one of its supplemental sheets, dated July 16, 1889, announced the Kansas City rate as extended over its line to Humboldt. The Texas & Pacific refused its assent to such extension, and the Missouri, Kansas & Texas Company on August 5, 1889, cancelled its supplement.

At the time of trial, the complainants had not been advised of this cancellation, and their counsel, assuming said supplement to be in effect, stated to the Commission that the Kansas City rate having been made applicable to Humboldt the purpose of the complaint had been in the main accomplished, but asked on behalf of complainants an order requiring defendants thereafter to maintain the same rate on sugar to Humboldt as that maintained to Kansas City and to refund excessive charges claimed.

It is apparent from the admitted and ascertained facts that the cause of complaint is the greater charge made by the defendants on sugar carried from New Orleans to Humboldt, Kansas, than is at the same time made by the defendants and other carriers on sugar carried to Kansas City and other Missouri River points more distant than Humboldt from New Orleans.



At the time of making the charges complained of, sugar was being carried from New Orleans to Kansas City by the defendants in connection with the Missouri Pacific Railway Company over a continuous line operated by them at a rate lower than the defendants' rate to Humboldt, and the defendants and the Missouri Pacific Railway Company had not established any joint tariff of rates or charges for such continuous line.

In their brief on behalf of one of the defendants, counsel insist, "nothing can be clearer than that in the absence of a joint rate agreed upon by carriers a reasonable rate is the sum of reasonable local rates." This position of counsel that joint tariffs of rates or charges are matters of agreement between carriers is in accordance with the action of both defendants as shown in the publication and cancellation of its supplemental rate-sheet by one on the refusal of the other to join in the rate named in such sheets.

A joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and for this purpose the words "and connections" are insufficient, if in fact they are effective for any purpose on the rate-sheet N. O. T. A. 1157, naming only initial carriers.

The publication of said "N. O. T. A. 1157 joint freight tariff" by the New Orleans Traffic Association on behalf of the Texas & Pacific and other railway companies, none of them having a line to Missouri River points, and to which "joint freight tariff" neither the Missouri, Kansas & Texas Railway Company nor the Missouri Pacific Railway Company was a party, did not establish as provided by section 6 of the Act to regulate commerce a joint tariff of rates and charges on a continuous line from New Orleans to such Missouri River points over the roads of said association or of any one of them in connection with any other road or roads over which freight might pass from New Orleans to such points.

The local rates on sugar between New Orleans and Kansas City published and filed with the Commission by the defendants and the Missouri Pacific Railway Company, respectively, are, over the Texas & Pacific, from New Orleans to Fort

Worth, 62 cents; over the Missouri, Kansas & Texas, from Fort Worth to Nevada, 65 cents, and over the Missouri Pacific, from Nevada to Kansas City, 15 cents. No joint tariff of rates or charges having been established in accordance with the statute on the continuous line operated by said several companies, the sum of the local rates was the only rate over said continuous line from New Orleans to Kansas City which had been published and filed in conformity with the statute.

Whatever liability or obligation the Texas & Pacific Company may have incurred as the result of issuing said rate-sheets and shipping and billing sugar through from New Orleans to Kansas City at less than the sum of the local rates of all the companies operating the through line, the local rate, which was 65 cents on that part of the line of the Missouri, Kansas & Texas and 15 cents on that part of the line of the Missouri Pacific over which the sugar passed in its through carriage to Kansas City, was the only rate or charge which had been legally published and filed at which such through freight could pass over the lines of these companies respectively.

The complainants insist that no higher rate to Humboldt can reasonably be maintained than the rate at the time prevailing to Kansas City and that defendants unjustly discriminate against complainants by charging more to Humboldt than to Kansas City.

In considering the question, we assume as do the complainants and defendants, that the rate of 30 cents at which defendants carry sugar to Kansas City is the authorized rate. Humboldt is not on the direct line over which defendants carry between New Orleans and Kansas City, and the shorter distance to Humboldt is not included in the longer to Kansas City, and it is not claimed that the higher charge to Humboldt is in conflict with the fourth section of the Act to regulate commerce.

The Texas & Pacific denies that it had with its co-defendant or otherwise made or established a rate of 30 cents or any other rate on sugar between New Orleans, Louisiana, and Parsons, Kansas. It could with as much reason deny that it

had made or established any such rate between New Orleans and Kansas City, which it neither denies nor admits. It could not refuse at New Orleans to receive and forward sugar to Fort Worth, consigned to Parsons, nor could the Missouri, Kansas & Texas refuse at Fort Worth to receive and forward it to Parsons. If while carrying in connection with another carrier to Kansas City, the Texas & Pacific Company may deny that it has made or makes a rate to Parsons, an intermediate point, in connection with such other carrier, each company may exact its local rate, and by such a device receive a greater charge to Parsons, the shorter distance point on the same line.

Parsons is a shorter distance junction point through which freight from New Orleans over the defendants' roads to Kansas City must pass, and the rate to this intermediate point over the defendant roads could not exceed the Kansas City rate, 30 cents, which the Missouri, Kansas & Texas in its answer admits the Parsons rate to be.

The route over the defendants' lines from New Orleans to Parsons is west of the Mississippi River and is 903 miles long, 200 miles or more of this distance being in the Indian Territory. The traffic over the line is comparatively light, and the rate of 30 cents to Parsons is not unreasonable, nor do the complainants allege that it is unreasonable or excessive for the service rendered. The distance to Kansas City being considerably greater, some higher rate to Kansas City than the Parsons rate would be justifiable were it obtainable. But the carriers over five other routes leading out from New Orleans are offering to carry and carrying sugar to Kansas City at 30 cents, and the defendants must carry at that rate or other routes would take it.

The Kansas City business is necessarily less profitable than is the Parsons business at the same rate, but the defendants may share in the less profitable traffic without prejudice to the complainants, to whom it must be a matter of indifference whether sugar goes to Kansas City over defendants' lines at 30 cents or by the other routes. The defendants might lawfully, under the same circumstances, carry to Humboldt at the Parsons rate, but it would not, we

think, be legal to compel them to do so, for the reason that the rate to Parsons is not unjust or excessive, and some higher rate to the more distant branch-line point, Humboldt, is justifiable and may be maintained without unjust discrimination.

The claim for excessive charges, amounting to \$131.24, which Lehmann, Higginson & Company ask may be awarded to them, is based on the supposition that any higher rate to Humboldt than to Kansas City was and is unlawful. In our view of the matter, as already stated, Kansas City and Parsons may lawfully have the same rate, while some higher charge to Humboldt may be justifiable.

Early in 1889, defendants carried sugar to Humboldt at the Missouri River rate, then 30 cents. The Missouri, Kansas & Texas Railway Company has on various occasions since then shown itself ready to join the Texas & Pacific in carrying to Humboldt at that rate. While the latter company has not, since the commencement of this proceeding, so far as ascertained, participated in a rate as low as 30 cents, it, with the other roads of the New Orleans Traffic Association, published, during many consecutive months in 1890, a rate of 36 cents to Humboldt. Each of the defendants would receive more for their respective shares on Humboldt traffic at 36 cents than they would receive for the like service on either Kansas City or Parsons traffic at 30 cents, and any higher rate than 36 cents to Humboldt was, at the time complainants were charged 42 cents, and still is, excessive.

No higher rate than 36 cents per hundred pounds on sugar from New Orleans to Humboldt should be charged by defendants, and they should refund to the complainants \$65.62, the amount of excessive charges paid on the three carloads of sugar, upon which complainants paid 42 cents per hundred pounds charges to Humboldt.

**THE HEZEL MILLING COMPANY v. THE ST. LOUIS,  
ALTON & TERRE HAUTE RAILROAD COMPANY  
AND THE ILLINOIS CENTRAL RAILROAD COM-  
PANY.**

Complaint filed May 17, 1889.—Answer filed May 27, 1889.—Leave to amend complaint and bring in Illinois Central R. R. Co. as defendant granted September 17, 1889. — Amended complaint filed October 3, 1889.—Answers to amended complaint filed October 8 and November 4, 1889. Testimony taken in St. Louis, Mo., September 12, 1890, and April 10, 1891.—Proposed findings and argument for petitioner filed May 15, 1891.—Decided December 15, 1891.

1. For the carrier to pay the larger expense of the transportation of a remote shipper's merchandise to the station, and not to pay the less expense of such transportation of the nearer shipper's merchandise, would be the equivalent of a rebate to the former, the railroad service proper being the same to each and at the same rate; nor would it be treating all patrons with statutable equality to bear a part of the cartage expense for one shipper and not bear a part of it for another.
2. Rates for the transportation of flour originating at St. Louis or East St. Louis and shipped over defendants' lines are the same, and such flour is forwarded by the first-named defendant from its receiving station in East St. Louis. Shippers in St. Louis deliver flour to rail or wagon transfer companies at their stations in St. Louis, and defendants bear the cost of transfer to said receiving station, the average being about six cents per barrel; or St. Louis shippers sometimes deliver to the wagon transfer company at their mill doors and then bear half of the cartage expense by wagon, the defendants the other half. Petitioner, who is a manufacturer and shipper of flour over defendants' lines in competition with St. Louis millers, teams flour from its mill about one-half a mile to said receiving station at East St. Louis, at a cost of six cents a barrel, or loads it on cars furnished by the defendants on a side track contiguous to said mill at a cost of about three cents a barrel, being required to so load such cars that the lot for the nearest station is placed in the forward part of the train, and lots for other stations are arranged consecutively, according to distance, and also being required to clean and repair such cars before using. *Held*, That on flour destined to points outside the State which the initial carrier requests petitioner to haul to its station, or which petitioner is compelled to haul there by reason of proper cars not being furnished on said side track for loading, petitioner is entitled to a reduction of six cents a barrel from rates in force as long as defendants bear that amount of the cost

of cartage for other shippers. *Held, further*, That defendants' rule requiring petitioner to clean and repair cars furnished on said side track is unreasonable, but the requirement that petitioner shall load such cars according to stations is, in view of counter advantages, not unreasonable; and rates on flour loaded by petitioner in properly cleaned and repaired cars so furnished are, upon the facts, properly the same as rates in force on shipments of flour originating in St. Louis.

8. With reference to the transportation of flour defendants seem to treat St. Louis and East St. Louis as a single business community; therefore, they cannot complain if this case is determined upon that theory. Taking petitioner's flour in cars from its mill is presumably equal in value to its expense of hauling by team; therefore, petitioner cannot complain that the carriers bear a portion of the cartage expense of the St. Louis millers equal to the benefit it receives from being able to deliver on the side track at its mill. Questions arising under a practice of partial or absolute free cartage, or growing out of the existence of side tracks to shippers' doors, must depend largely for solution on the particular circumstances of each case.

*Walter M. Hezel and J. O. Broadhead*, for petitioner.

*George E. Lary*, for defendants.

#### REPORT AND OPINION OF THE COMMISSION.

*VEAZEY, Commissioner:*

In the original complaint the St. Louis, Alton & Terre Haute Railroad Company was the only defendant. Thereafter, and before hearing, the complainant asked and obtained leave to make the Illinois Central Railroad Company a party defendant, and having filed an amended complaint, both the defendants answered the same.

The question in this case as appears from the pleadings and evidence concerns the transportation of interstate traffic originating at St. Louis, Missouri, and East St. Louis, Illinois, and destined to divers points south of Cairo, on the line of the Illinois Central Railroad and other southern, southeastern and southwestern points reached by the defendants and other lines operated in connection with them. The petitioner, which is a corporation engaged in the manufacture of flour at East St. Louis, complains that its business in that regard is discriminated against by the defendant carriers in favor of St. Louis manufacturers of the same com-

modity, and it is said that this discrimination is brought about by the practice of the carriers in permitting the St. Louis shippers to deliver their freight at the depot of the St. Louis Transfer Company or at the depot of the St. Louis Bridge & Tunnel Company in the city of St. Louis, whence the goods are transported to the receiving depot of the St. Louis, Alton & Terre Haute Railroad Company at East St. Louis at the expense of the defendants, the rate from St. Louis, including the amount paid by the carriers to the transfer companies, being the same as that charged to the complainant and other shippers from East St. Louis to the same destinations.

The answer of the St. Louis, Alton & Terre Haute Railroad Company substantially admits that the practice complained of exists. It contends, however, that the business situation is such, and the competition between various lines centering at this point on the Mississippi River is such, as to demand the same rate for transportation from St. Louis as is charged from East St. Louis, and, as to the business of the petitioner, states that the complainant has its choice of delivering freight at the receiving depot of the defendant at East St. Louis or loading the same direct from its mill into the cars, to and from which the defendant switches the cars free of charge.

The answer of the Illinois Central Railroad Company states substantially that its line connects at Du Quoin, in the State of Illinois, with the railroad of the other defendant running between Du Quoin and East St. Louis, and that it has been the custom to receive freight from the last named company at Du Quoin, destined to points on its road and other southern points reached by connecting lines, so as to provide for a continuous carriage without transshipment, and avers that the rates in such cases from St. Louis and East St. Louis, in the case of transportation of freight in which it participates, are divided according to an agreed percentage. This defendant disclaims any knowledge of any particular shipment made by the petitioner.

There is very little controversy as to the facts important to be considered in arriving at a determination of this case.



The petitioner is a large manufacturer of flour at East St. Louis, and its business is very largely with customers living on the line of the Illinois Central road, and at southern, southeastern and southwestern points reached by the lines of the defendant railway companies and their connections. Its mill is situated about a half mile from the receiving station of the St. Louis, Alton & Terre Haute Railroad Company at East St. Louis, and that company maintains a side-track contiguous to the mill property.

The petitioner delivers its flour in two ways, viz.: Either by sending the flour by its own teams from its mill to the receiving station of the railroad company at East St. Louis, at a cost as claimed of about six cents per barrel, or by loading it on the cars of the railroad company, which are switched to and from its siding free of charge. It costs the petitioner about three cents a barrel to load the cars on the siding; in addition to this expense the complainant is required to clean and repair the cars in order to place them in fit condition to ship in; besides, the cars are required to be loaded according to stations; that is to say, all flour destined for a particular place is not only put in the same car, but is also loaded so that that part destined for the nearest station is placed in the forward part of the train, and that for the most remote station at the rear of the train, the lots for intermediate stations being arranged consecutively according to the distance of the point of consignment. It was stated on the hearing that one-half of the cars had to be cleaned, but it did not appear just what the requirements to clean and repair the cars, or to load according to stations, really cost the complainant; it did appear, however, that these requirements were a source of expense to it.

The St. Louis millers also ship flour by the defendants' lines to the same points as the complainant. They make their delivery in St. Louis, and from thence it is taken to the railroad station in East St. Louis in one of the three following ways :

1. By rail from the station of the Terminal Railroad Association of St. Louis.



2. By wagons from the station of the St. Louis Transfer Company.

3. By wagons from the doors of their mills, by wagons of the St. Louis Transfer Company.

The method of making delivery above described is as follows:

I. To the station of the Terminal Railroad Association of St. Louis. This corporation is engaged in the business of transferring freight by *rail*, from St. Louis, across the river to the railroad station at East St. Louis. Sometimes it is loaded by the shippers directly into the cars, the Terminal Association furnishing help to tier up the barrels in the car, the shipper simply rolling the barrels in. When the cars are not at hand the shipper rolls the barrels off upon the platform, whence they are loaded by the employes of the Terminal Association. For transferring flour in this way from its depot in St. Louis to the railroad station at East St. Louis, the Terminal Association receives four cents a barrel, which is wholly paid by the defendants. The shippers bear the expense of delivering flour from their mills to the depot of the Terminal Association in St. Louis.

II. To the depot of the St. Louis Transfer Company. This corporation is engaged in the business of transferring freight by *wagons*, across the river, to the railroad station at East St. Louis. The shippers bear all the expense of hauling the flour to the platform of the St. Louis Transfer Company and unloading it there, or into wagons, if that can be conveniently done, but they are not required to wait for the wagons. For the transfer of flour by this method the St. Louis Transfer Company receives eight cents a barrel, which is paid by the railroad companies.

III. Sometimes the wagons of the Transfer Company take flour directly from the mills of the St. Louis shippers. When that course is pursued, the shipper pays one-half of the transfer charges, or four cents a barrel, the railroad companies paying the other half.

From the foregoing it will be seen that the railroad companies, except in case the wagons of the Transfer Company take the flour from the mills at St. Louis, bear the entire expense of transferring the flour from the transfer stations in St. Louis to the railroad station in East St. Louis, and at an expense of either four or eight cents a barrel, according to the method of transfer; when accomplished in railroad cars from the station of the Terminal Railroad Association, the former sum, and when in wagons from the station of the St. Louis Transfer Company, the latter sum. It did not appear what proportion of flour was shipped by these different methods from St. Louis.

Each of these methods of receiving flour from the St. Louis shippers differs from that adopted in regard to shipment of flour by the petitioner. The petitioner, as above stated, either loads its flour directly in the cars at the siding on the mill property, having first put the cars in condition fit to ship in, by repairing or cleaning them, or the flour is hauled directly to the station of the defendant railroad company at East St. Louis where it is loaded in the cars by that defendant, the same as flour is loaded by the Terminal Association when delivered at its depot by St. Louis shippers.

Where flour is shipped *via* the defendant railroads from East St. Louis, the bills of lading are filled out in the same manner whether the flour originates at St. Louis or East St. Louis. In either case they are made up nominally of two items—"advance charges," meaning the transfer charge for taking the flour across the river, and "unpaid charges," meaning the railroad freight. In the case of flour from St. Louis, "advance charges" are actually paid to that transfer company which transfers the flour, but in case of a shipment originating at East St. Louis, although in point of fact no "advance charges" are paid, the railroad company makes out the same kind of a bill and collects the whole sum, and turns the money for these alleged "advance charges" into its own treasury.

It results from the foregoing facts that the railroad companies receive less money for a shipment of flour originating in St. Louis than in East St. Louis.

The Commission in the case of *Stone & Carten v. The Detroit, etc., R. R. Co.*, 3 I. C. C. Rep. 613; 3 Inters. Com. Rep. 60, had occasion to pass upon the subject of free cartage. In that case the rates from eastern points were the same on freight destined to Ionia, Michigan, and to Grand Rapids, Michigan, both places being on the line of the Grand Haven road, the latter station being at a greater distance from the initial point than the former.

At Grand Rapids, the carrier provided at its own expense drays, cars and trucks for the service of transferring freight from its station to the place of business of its patrons there, and performed such service without additional charge to the owner or shipper of the property. It was contended by the defendant that such carriage was a terminal expense rendered necessary by reason of the remoteness of defendant's warehouse from the business part of the city. This however was not sustained by the Commission, and it was said in the report and opinion, p. 622:

"The effect of the respondent doing the cartage at its own cost of two cents per hundred pounds is precisely the same that it would be if all its rates to Grand Rapids were made two cents a hundred pounds less, and the consignees were left to pay the cost of cartage. But if that were done the Ionia rates would clearly be illegal, because they would be two cents a hundred pounds more than the Grand Rapids rates. If, then, the argument for the respondent is sound, the same thing in substance and effect may be legal to be done in one way and illegal when done in another; the form will determine its lawfulness and not its substance. So if the rates to the two towns were made the same, but the Grand Rapids consignees were allowed a rebate of two cents a hundred because of their greater distance from the railroad warehouse, the illegality would seem to be equally obvious. But this would differ from the present arrangement in form only, not at all in substance."

The dissenting opinion of Bragg, *Commissioner*, in the above case, will be found, upon examination, to be based upon facts not existing in this case.

Although St. Louis and East St. Louis are different municipalities, and in different States, they are not unlike many cities constituting a single municipality; they are separated by the Mississippi River, which is crossed by a railroad and wagon bridge, as well as by numerous ferries, but with refer-

ence to the transportation of flour, the defendants seem to have treated the two cities as a single business community; therefore they cannot complain if this case is determined upon that theory.

This is not a case where the carriers adopted the practice of entire free cartage from mill to station for some or all of their flour patrons. It therefore does not call for consideration of questions which might arise in a case where free cartage is accorded from mill to station, and one mill was more remote therefrom than another and the cartage expense increased in proportion to distance, but this is a case where the carriers pay a portion of the expense of delivery to station to certain shippers only.

It is easy to see that questions arising under a practice of partial or absolute free cartage, or growing out of the existence of side tracks to shippers' doors, must depend largely for solution on the particular circumstances of each case.

The expense of getting the flour from the mills in St. Louis to East St. Louis is made up of two parts, the one (unless the delivery is from the mill door) is borne by the shipper by hauling in wagons from the mills to the stations of the transfer companies; the other expense is that of transferring the flour from such stations in St. Louis to the defendants' station in East St. Louis.

In respect to the petitioner's flour, unless it loads directly into the cars at its mill, it bears all the expense of hauling the flour from the mill to the depot.

In the one case the railroad pays a part of the expense, and in the other it pays none.

The St. Louis, Alton & Terre Haute Railroad Company has but one station for St. Louis and East St. Louis, and that is at the latter place; this railroad does not cross the river, and all the flour from the St. Louis mills destined for points reached by the defendant railroads must be carried across the river by the shippers themselves directly, or by some intermediate transportation agency, such as "The Terminal Railroad Association," or the "St. Louis Transfer Company," as above described.

The river being between the terminus of the defendant

railroads and the mills at St. Louis makes the expense of delivering the flour destined to points east of the Mississippi River greater than the expense of delivering from the petitioner's mills, and of course the converse of this proposition is true, the St. Louis mills being more favorably located as to expense of delivery than is the petitioner as to shipments of flour destined to points west of the river.

Each class of mills, therefore, has peculiar advantages of location; those at East St. Louis being more favorably located for the southeastern trade, and the St. Louis mills being more favorably located for the southwestern trade.

If the defendants did not bear any of the expense of the delivery of flour for any shippers to the station in East St. Louis, they would be treating all shippers with that equality which the statute requires; if, however, they bear any of the expense of the St. Louis shippers in delivering flour to that station, and bear no part of this expense for the East St. Louis shippers, then they do not treat all shippers on even terms.

For the carrier to pay the larger expense of transportation of a remote shipper's merchandise to the station, and not to pay the less expense of the nearer shipper's merchandise, would be the equivalent of a rebate to the former, the railroad service proper being the same to each, and at the same rate.

As before stated, the terminus of the St. Louis, Alton & Terre Haute Railroad is at East St. Louis, and the rate on flour was from the station there situated; defendants' service as carriers really begins there, and it might not be treating all patrons with statutable equality to bear a part of the cartage expense for one shipper and not bear a part of it for another.

But in this case, the St. Louis, Alton & Terre Haute Railroad Company maintains a short side-track or switch from its main line to the petitioner's mill, and could take its flour from the mill door, and has taken some in that way. If, as to flour so taken, that method of business was an advantage to the petitioner equal to the amount paid to the Transfer

Companies for getting the St. Louis flour across the river, then there has been no discrimination. The petitioner has drawn some of its shipments to the station by teams, at an expense of about six cents a barrel. The advantage of taking the petitioner's flour at its mill was presumably (and nothing in the case appears to the contrary) equal to the expense to the petitioner in hauling by teams; therefore, the petitioner cannot complain that the carriers bear a portion of the cartage expense of the St. Louis millers, equal to the benefit it receives from being able to deliver on the side-track at its mill.

If, however, the defendants should fail to take all the flour of the petitioner directly from the mill, destined to points beyond the State, and the petitioner should be compelled to haul more or less of the flour to the station, the carriers should bear a proportion of the expense as to such flour, equal to the amount they bear for the St. Louis millers.

The amount which was borne of that expense for the St. Louis millers, by the carriers, varied as above stated. In the case of the transfer being made by the Terminal Association, it was 4 cents a barrel; when by the St. Louis Transfer Company, it was 8 cents a barrel. It did not appear what proportion was transferred by the one company or the other. Neither party having shown the respective proportions, they cannot well complain of an assumption that the proportions were equal, and this would make the average on all flour transferred from St. Louis to the railroad station of the defendant at East St. Louis, six cents a barrel, and this happens to be the same sum which it costs the complainant to haul its flour from its mill to the same station.

It is difficult to see, if the defendants' theory of a single business community is discarded, how a more beneficial result for the petitioner could be reasonably arrived at; because, upon the other theory of two separate business communities, separated by a distance of one or more miles, and that the transfer companies' part of the transportation constituted a portion of the through line between St. Louis and eastern and other points, then the main question, aside from car

cleaning, repairing and the loading features, would be that arising under the "long and short haul" section of the Act, in respect to which no violation of that section (although it might be of some of the other sections), could be fairly claimed, as the rates on both sides of the river would be the same. The only discrimination left for consideration, under this view, would be that relating to discrimination or preference in the subordinate matters above mentioned, and the reasonableness of the rate in itself.

We think, all the circumstances considered, that the petitioner, in order to be put on equality of treatment with the St. Louis millers, is entitled to an order allowing him a reduction of six cents a barrel on the rates which may be in force, as long as the defendants bear that amount of cartage of other millers, on all flour destined to points outside the State which the initial carrier requests the petitioner to haul to its station, or which the petitioner is compelled to haul there by reason of proper cars not being furnished.

If the petitioner is entitled to the advantage of better locality of its mill for easterly shipments, as he claims, the result arrived at above gives him that advantage, as compared with the St. Louis millers, to the extent of the cost to the St. Louis shippers of flour for hauling their shipments to the stations of the transfer companies in St. Louis.

We think, also, that the requirement for the petitioner to clean and repair the cars, in order to put them in a proper condition to be used for shipment of flour is unreasonable, and that the cars ought to be furnished on the mill side-track in such condition that petitioner shall not be put to any expense of getting them ready.

The requirement that the petitioner shall load according to stations is not unreasonable. It may put him to some trouble and expense, but there are advantages springing from this method of delivery which may fairly be considered as balancing the disadvantages.

The order should be that, so long as the defendants, or either of them, maintain the existing practice of bearing a portion of the expense of the delivery of flour from the mills

at St. Louis to the railroad station of the defendant at East St. Louis, they shall allow the petitioner a rate which shall be six cents a barrel less than that charged to shippers for whom a portion of the cartage expense equal to that amount is borne by the defendants, upon all flour which the initial carrier requests the petitioner to haul from its mill to the said station, or which it is compelled to haul there by reason of proper cars not being furnished on the side-track near petitioner's mill upon reasonable notice from the petitioner; that if, upon such reasonable notice, cars are furnished to the petitioner upon said track, near petitioner's mill, which are in sufficient repair and properly cleaned for the shipment, then the defendants may maintain the same rates for such shipments as they have in force for other shippers of flour originating in St. Louis from the station at East St. Louis, although they bear a portion of the cartage expense as to such other shipments, and the defendants may require the petitioner to load the cars furnished to its side-track according to stations.



IN THE MATTER OF THE CARRIAGE OF PERSONS  
FREE OR AT REDUCED RATES, BY THE BOS-  
TON & MAINE RAILROAD COMPANY.

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Order served July 16, 1891.—Answer filed August 14, 1891.—Hearing and investigation had October 7 and 8, 1891.—Briefs filed December 10–26, 1891.—Decided December 29, 1891.

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The defendant issued passes entitling the holders to free transportation over the lines of its system, extending into the States of Maine, New Hampshire, Vermont and Massachusetts; there were several classes of the persons who received the passes, among them, gentlemen long eminent in the public service, higher officers of the States, prominent officials of the United States, members of the legislative railroad committees of the above-named States and persons whose good-will was claimed to be important to the defendant; *held*, that the giving of free transportation to such persons was a violation of the Act to regulate commerce.

The defendant also issued such passes to other classes of persons, among them, the sick, necessitous and indigent, proprietors of hotels, members of the families of employees, agents of ice companies, milk contractors, State Railroad Commissioners, trustees of railroad mortgages and newspaper publishers for advertising; *held*, as to these latter classes of persons that as the investigation as to them had not been finished, the case should be held for further consideration and order.

When an investigation by the Commission to inquire into the business management of a common carrier has been fully concluded as to some matters, and not concluded as to others, an order may be made *pendente lite*, as to the former, and cause retained for further consideration and order as to the latter.

Upon the facts found in this case, *held*, that the second section of the Act prohibits the giving of free transportation to the persons embraced within the classes first above named; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, “under substantially similar circumstances and conditions” relate to the nature and character of the service rendered by the carrier, and not to the official, social or business position of the passenger; that section twenty-two of the Act is exceptive in character and only applies to the persons and subjects expressly specified therein.

*William E. Chandler*, for the complaint.

*Richard Olney*, for defendant.

*J. M. Page*, for National Editorial Association of the United States.

REPORT AND OPINION OF THE COMMISSION.

BY THE COMMISSION :

Informal complaint having been made to the Interstate Commerce Commission that the Boston & Maine Railroad Company, a corporation and common carrier subject to the provisions of the Act to regulate commerce, in the management of its business as such, ignores and sets at naught the requirements of said Act, in that it has through its officers, servants, agents and attorneys, during the two years last past, extensively, unwarrantably and illegally given free carriage, or carriage at reduced rates of fare, to divers persons not entitled to receive such free carriage, or carriage at reduced rates under the said Act, and particularly, that the said Boston & Maine Railroad Company has attempted to evade the requirements of the said Act, by entering into so-called agreements with the editors, or proprietors of various newspapers in the States of Maine, New Hampshire, Vermont and Massachusetts, whereby free carriage, or carriage at reduced rates, is illegally given to said editors, or proprietors, and in some instances to their families and employees ostensibly for the part payment of advertising or other service, but really for the purpose of evading the requirements of said Act, and particularly specifying one instance of this kind. And the Interstate Commerce Commission, having decided to investigate said complaint by inquiring into the business of said common carrier, it was ordered that the Boston & Maine Railroad Company, on or before the 5th day of August, 1891, should make and file with the Secretary of the Commission, at its office in Washington, in the District of Columbia, a full, complete, perfect and specific answer, setting forth all and singular the facts and circumstances in regard to the matters and things complained against it, as set forth, and particularly the said railroad company was required to state and make known in its answer to the Commission, as follows :

1. Do any persons hold passes from the said Boston & Maine Railroad Company, entitling them to free or reduced rates for transportation over its lines, or any part thereof; if so, under what arrangement are such passes, or tickets issued. In answering this question, the Boston & Maine Railroad Company is required to state the names of the persons holding such passes or tickets, their addresses, so far as known, and, if said passes are confined to a single State, to include the names of such persons, if they hold concurrently a pass, or passes, or reduced-rate tickets over its lines, effective in any other State than that for which the free carriage is limited to a single State. And if said passes or any of them, or said reduced-rate tickets, are issued under any arrangement or contract with said persons, then the arrangement is to be substantially stated, together with the dates thereof and the amount of transportation therein provided for, and on what account, and for what reason.

2. State the names of all persons, either under contract or otherwise, holding annual passes on July 11th, 1891, over the line of the Boston & Maine Railroad, or any portion thereof extending between any two of the States in which said railroad is situated, and if any of the said passes are confined to the limits of any one of the said States, then the names of all persons, and their addresses so far as known, holding passes concurrently effective over a portion of its line in any State other than that to which the said annual pass is limited as aforesaid, and not including the names of its own officers and employees immediately engaged in the operation of its own road, nor the names of the principal officers and employees of other railroad companies to whom such passes have been issued in exchange.

3. State the names and addresses, so far as known, of all persons to whom annual, trip, special or other passes or tickets at a reduced rate of fare have been given during the two years last past, together with the reasons for the issuance thereof, and if any of said passes or reduced rate-tickets have been limited to any one State, include the names of such persons, if they concurrently held other passes or tickets, effective

over its line, or any portion thereof, in any other State, not including, however, the names of its own officers and employees immediately engaged in the operation of its own road, nor the names of the principal officers and employees of other railroad companies to whom such passes have been issued in exchange. But not excepting from the answer to this interrogatory the names of any person to whom such passes or reduced-rate tickets have been issued pursuant to any contract, agreement or arrangement between the said Boston & Maine Railroad Company and such persons, ostensibly providing therefor as payment for advertising, or other service.

The said railroad company in answer denied in general terms having violated the provisions of the Act to regulate commerce in respect to free transportation of passengers, but admitted that it had given tickets entitling the holders to free interstate transportation, and set out in schedules the names and addresses of the persons to whom such free passes had been given, as called for specifically in the order, with a memorandum against each name, indicating the reason for the issuance thereof. These persons were arranged in classes specified in the answer as follows:

“Class 1—includes sick, necessitous or indigent persons—in short, all cases of charity strictly.

“Class 2—includes gentlemen like Honorable James W. Bradbury, long eminent in the public service.

“Class 3—includes proprietors of summer hotels and large boarding houses, conformably to a practice which has long existed among all the railroads of New England.

“Class 4—includes wives of employees and other immediate members of employees' families.

“Class 5—includes all agents of ice companies and all milk contractors doing business on the line of the Boston & Maine Railroad or any part thereof extending between any two States—said agents and contractors traveling on the trains in the conduct of their business.

“Class 6—includes the higher officers of state, in the States of Maine, New Hampshire, Vermont and Massachusetts, and certain prominent officers of the United States, like Collectors of Customs.

“Class 7—includes the Railroad Commissioners of each of the States of Maine, New Hampshire, Vermont and Massachusetts.

“Class 8—includes the members of the Railroad Committee for the time being of the legislature of each of the States of Maine, New Hampshire, Vermont and Massachusetts.

“Class 9—includes persons who are trustees under mortgages on the property of the corporation and who are entitled to inspect its property by virtue of the deed or indenture constituting them trustees.

“Class 10—in the schedule annexed, called ‘Complimentary’—includes persons whose good-will is important to the corporation; and who, so long as the general practice of railroads remains what it now is, might justly take offense if in the matter of free transportation they were to receive from the Boston & Maine Railroad different treatment from that received from other railroad corporations.”

This company also annexed to its answer a copy of its contract with Joshua Foster, named in the complaint, and alleged that the contract was entered into *bona fide*, was in the interest of the Boston & Maine Railroad Company, and secured for it advertising and printing more than equivalent in value to the value of the transportation furnished; that the passes issued under said contract were free passes only in name, and represented full value received by said railroad company

It further alleges that it conducted its business, in respect to the giving of passes, the same as other railroads do.

Upon investigation of the subject matter involved in said complaint, it appeared and is found that the defendant rail-

road company had issued a large number of interstate tickets without charge, called and known as passes, which conferred upon the holder the right of free transportation over the lines of the railroad, many of them being still in force; that this is done not only for single trips, but passes good for a year are given and are issued annually to the same general classes of persons, and that the same are used by the holders in some cases at least—how generally did not appear. This issuing of annual and trip free passes, good for state or interstate use, has become a regular feature of the business of administering the affairs of the defendant railroad. They are given mainly by the general manager of the railroad, and a record thereof is kept, showing the name and residence of the donee and the number of his pass. They are good only for the person named on the pass, and conductors are instructed to take them up and return them to the manager's office if presented by any person other than the one named thereon. The defendant claimed that the custom of giving free passes had always existed to some extent since the defendant railroad was put in operation, and said that it existed generally in the country and to much the same class of persons, varying probably in extent on different railroads, with a natural tendency to increase, and admitted it had probably at times and on some railroads grown into a great abuse, and that it is a troublesome and annoying practice, but one that a single railroad or system could not easily unload or discard unless all did it. The investigation was limited to interstate passes and did not extend to state passes except in a general way and so far as necessary to a full understanding of the extent and character of the interstate passes issued. The president of the defendant company testified that he had given a few interstate passes, but not many, as that branch of the administration was devolved upon the general manager. The books and records of the company showed that the classes of persons to whom passes had been given for the past two years were stated with substantial accuracy in the defendant's answer. There was no controversy in the evidence, and the foregoing statement of facts is perhaps sufficient so far as pertains to the case of

persons embraced in Classes 2, 6, 8 and 10, which include "gentlemen eminent in the public service," "higher officers" of States named, "prominent officers of the United States," members of railroad committees of the legislatures of the four New England States named, and "persons whose good will is important to the corporation and who, so long as the general practice of railroads remains what it is now, might justly take offense if in the matter of free transportation they were to receive from the Boston & Maine Railroad different treatment from that received from other railroad companies," the latter class being denominated in the record and on the face of the passes as "complimentary."

Briefs have been filed by Hon. William E. Chandler in support of the complaint, and by Hon. Richard Olney in behalf of the defendant, and by J. M. Page, Esq., Secretary of the National Editorial Association of the United States, in behalf of said association. In the briefs of Mr. Olney and Mr. Page it is stated, in effect, that Mr. Chandler was inspired to make the charges involved in this complaint by personal spite and political considerations. This statement in regard to Mr. Chandler elicited a reply not without interest or point; but this is of course immaterial, for the question presented is not one of motive for the attack, but whether the conceded practice of the defendant is vulnerable and obnoxious to the provisions of the Act to regulate commerce, and it was the duty of the Commission to investigate the matters charged, and whether upon formal or informal complaint is equally immaterial.

The order of the Commission was directed to an investigation of the practice of the defendant in issuing free transportation to favored persons, such as has been described. The answer admits the fact that free transportation has been issued and to a very great number of persons, but contends that the practice is not prohibited by the law.

On the other hand it is claimed that the practice constitutes a violation of the law in a substantial and important respect.

Whatever may have been the animus of the person who



presented the question to the Commission, whether ulterior or otherwise, is not a matter of any importance because the original order of the Commission, after it had decided to investigate the subject, the answer of the defendant and the proof submitted, fairly present a question for the adjudication of the Commission of very great public interest, a subject which, as will be seen hereafter, had had the serious consideration of the Commission in the past, and which should be definitively and authoritatively determined.

The question which the case presents for adjudication is: Does the Act prohibit the granting of free interstate transportation to passengers? Plainly, it does not in all cases, for such transportation or transportation at reduced rates, may be given to certain classes of persons specified in section 22 of the statute.

The inquiry then arises: Does the Act prohibit the giving of free transportation to persons other than those specified in section 22, and if so, are the passes which the defendant admits it issues within or without the exceptions of the section? \*

Defendant's counsel contends that the defendant, in furnishing free transportation to such passengers, has not violated any provision of the statute, first, because it does not in terms forbid the issuance of free passes; second, if Congress intended prohibition it ought and might reasonably be expected to have disclosed it in explicit language; third, what the Act prohibits is unjust discrimination, which the Act itself defines to be charging one person greater or less compensation for services rendered than it charges another for a like and contemporaneous service "under substantially similar circumstances and conditions;" but in the

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\* Section 2 of Act to regulate commerce reads as follows:—

SEC. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.



cases for transportation to the persons above described, the circumstances and conditions of the carriage are substantially different from those under which passengers generally are carried; fourth, that section 22 of the Act in expressly permitting the free carriage of certain classes of persons does not thereby impliedly prohibit the free carriage of all others; that it is directed, not to the matter of carrying passengers free or for pay, but to the matter of discrimination; that, as the previous portions of the Act had expressly prohibited all discrimination, this section qualifies the universality of the prohibition by specifying certain cases in which there may be discrimination; fifth, that the Act has received practical construction in accordance with the foregoing views, by the practice of all railroads of the country of giving free passes, since the law was enacted the same as before, whenever their interest seemed to demand it, and by the habit of governors, legislators, judges, and all classes of Federal and State officials and prominent citizens generally receiving and using free passes the same since the enactment as before; sixth, that the above-claimed construction of the Act is confirmed by the fact that the Interstate Commerce Commission has taken no action indicating that the methods and practices pursued were in any way contrary to law.

The essential and pivotal point of this argument is in the third clause, and rests in the assumption that the "contemporaneous service" in the transportation of two persons, one on a free pass, the other for the paid tariff rate, is not "under substantially similar circumstances and conditions," but is under such dissimilar circumstances and conditions as to render the alleged prohibitory element of the statute inoperative.

If this assumption or claim is sound, there is no answer to the defendant's position that free transportation of passengers is in no case made unlawful.

The question is therefore narrowed to the point as to what constitutes "substantially similar circumstances and conditions" in the carriage of passengers. It is not questioned under this Act, that if A and B each has a ton of freight precisely alike, to be transported between the same points

in the same manner, by the same carrier, the latter must render the service at the same rate or charge to both, and this regardless of their individual standing in the community. It is "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." The Act, in section 2, in terms makes the prohibition of a greater charge to one than to another apply to the transportation of both "passengers" and "property." The language is so explicit that it seems to leave no room for interpretation. The only difference in the "circumstances and conditions" as between A and B is that relating to their personality, but this can have no bearing upon the transportation of their property or the carriage of their persons. Difference in size or weight of persons, not considering young children, is not regarded in passenger traffic as creating a ground of difference in rates. *Thurber v. N. Y. C. & H. R. R. Co.*, 3 I. C. C. Rep. 510. Moreover the defense is not made on the assumption of unlike service. Their difference may be illustrated by supposing A is the governor of the state and B a common laborer. Is it supposable that Congress intended in a provision of this character, purporting to protect people against inequality of treatment by carriers subject to the Act, to give the country a statute that creates or allows such class distinctions?

The view of the defendant, although a public servant and, in a sense, administering a function of the State (*Olcott v. Fond Du Lac Co.*, 16 Wall. 694, 21 L. ed. 570), seems to be that it has a right, unrestricted by the statute, to divide the public into two classes, placing in one class persons more or less distinguished, or whose good-will is important to the corporation, and some others, and in the other class, the remainder of the public, and according to the former the privilege of using the public franchise without the payment of fare, but exacting fare from the latter.

If the patron who occupies an official or an important business position and possesses corresponding influence in a community is entitled to consideration on that account as to his transportation as a passenger, why should he not be entitled to the same as to his property? We see no ground

for deviating as to passenger traffic from the established rule as to freight traffic; and we are cited to no case where a different rule has obtained.

Under the English Railway Clauses Act of 1845, which provided "that all such tolls be at all times charged equally to all persons. . . . in respect of all passengers and of all goods . . . of the same description. . . . under the same circumstances," the English courts have held with great unanimity that the differences in circumstances and conditions are those relating to the carriage of the goods, to the nature and character of the service rendered by the carrier, and not to the business motives of either the shipper or carrier.

*Great Western R. Co. v. Sutton*, L. R. 4 H. L. 226; *Denaby Co. v. Manchester, &c., Ry. Co.* L. R. 11 Appeals, 97 (H. L. 1885).

In the latter case, *Lord Chief Justice Blackburn* said:

"I think it finally settled by *Great Western R. Co. v. Sutton*, and by *Evershed's Case*, 3 App. Cas. 1029, that for passing over the same portion of the railway, the obligation to charge, in respect of goods of the same description, equally, is imposed if they are 'under the same circumstances,' and that the circumstances are those relating to the carriage of goods and not the person of the sender."

Other decisions in England are harmonious and to the same effect:—

*Nitshill Coal Co. v. Caledonian Ry.*, 2 N. & M. 39; *Bellsdyke v. N. B. Ry. Co.*, 2 N. & M. 105; *Holland v. Festinog Ry. Co.*, 2 N. & M. 278; *Harris v. Cockermouth, etc.*, 1 N. & M. 97; *Garton v. Bristol*, 1 N. & M. 218; *Baxendale v. Ry. Co.*, 1 N. & M. 202; *Oxlade v. N. E. Co.*, 1 N. & M. 72.

The evils of free transportation of persons and of discrimination in passenger rates by common carriers, is discussed in the First Annual Report of the Commission (p. 7). The subject had been considered by the Commission during the year preceding that report, *In re* Petition of the Order of Railway Conductors, 1 I. C. C. Rep. 8, 1 I. C. Rep. 18; *Larrison v. Chicago & Grand Trunk R. Co.*, 1 I. C. C. Rep. 147, 1

I. C. Rep. 369, and in *Smith v. Northern Pacific R. Co.*, 1 I. C. C. Rep. 208, 1 I. C. Rep. 611.

The opinion of the Commission as declared in that report and in the cases above alluded to was unequivocally to the effect that under the law it was no longer competent for the carriers to discriminate among passengers enjoying the same accommodations, by means of any special classification dependent upon occupation, or other condition or circumstance of a personal nature, except as the law itself by the twenty-second section in terms authorized it.

In the case of *Griffiee v. B. & M. Ry. Co. in Nebraska et al.*, 2 I. C. C. Rep. 301, 2 Inters. Com. Rep. 194, decided in 1888, the Commission uses this language:

The offense under section 2 of the Act to regulate commerce of giving free transportation to an individual, consists in the charging, demanding, collecting or receiving by the carrier from some other person or persons, a compensation for a like service when none is contemporaneously charged or received from the person thus transported free.

In *Slater v. Northern Pacific Railway Co.*, 2 I. C. C. Rep. 359, 2 I. C. Rep. 243, decided the same year, the Commission decided that:

Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier, nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could, was illegal.

In the Third Annual Report to Congress, in 1889, the Commission said, in the course of a long discussion of the subject, as follows:

The statute undoubtedly was framed to prohibit passes or free transportation of persons, as one of the forms of unjust discrimination, favoritism and misuse of corporate powers that had grown into an abuse of large proportions and become demoralizing in its influence and detrimental to railroads, both in loss of revenue and in provoking public hostility. . . . The law aims at the correction of the abuses of free transportation, and, in accomplishing this general purpose, some forms of free or reduced transportation that at first view might appear plausible, or even unobjectionable in themselves have to fall under its general restrictions. . . . The discrimination is equally unjust whether the free transportation be complimentary or

to aid some person's business, or for some supposed indirect advantage to the carrier. The correction of the evil, and the equality of right to which all are entitled, required the restrictions to be general and sweeping to furnish any substantial assurance that the abuse should not be continued or new ones devised under cover of any discretion left to the carrier.

And again, after referring to section 22 of the Act, the report further says:

The classes of persons that may have reduced rates or free carriage are thus carefully specified in the statute, and their enumeration necessarily excludes all others. Except as qualified by this section, the issuance and sale of passenger tickets must be in accordance with the general principles of the Act.

Other utterances and decisions of the Commission to the same legal effect have been made every year since its organization, and its construction of the Act has been indicated by its repeated recommendations to Congress to add other classes of persons to the exceptions (as they were always regarded by the Commission) contained in section 22.

We find not only these views held by the Commission from its organization, but by the Federal Courts when the question has arisen.

In *Ex parte Koehler*, 1 Inters. Com. Rep. 317, Judge Deady decided, on the application of the receiver of the Oregon & California Railway Company, asking for instruction as to the granting of free transportation to the families of employees, that the Act to regulate commerce prohibited the issuance of passes to such persons, they not being included in what he held to be the excepted classes named in section 22.

Without further citation of authority, the construction we give to section 2 of the Act to regulate commerce is that where the service by the carrier subject to the Act is "like and contemporaneous" for different passengers, the charge to one of a greater or less compensation than to another constitutes unjust discrimination and is unlawful, unless the charge of such greater or less compensation is allowed under the exceptions provided in section 22; and that where the traffic is "under substantially similar circumstances and con-

ditions" in other respects, it is not rendered dissimilar within the meaning of the statute by the fact that such passengers hold unlike or, as sometimes termed, unequal official, social or business positions, or belong to different classes as they ordinarily exist in a community, or are arbitrarily created by the carrier.

Under this construction of the Act, the practice of the defendant in giving free transportation, such as it concedes was issued to "gentlemen long eminent in the public service," "higher officers of States, and prominent officials of the United States," "members of legislative railroad committees," "persons whose good-will is important to the corporation," is unwarranted unless the favored person also comes under some exception specified in section 22 of the Act to regulate commerce.

The investigation was instituted, as appears from the original order, for the purpose more especially of making inquiry into the business practice of issuing free passes by the defendant than with reference to any particular case or special infraction of the law.

The inquiry developed, however, that in addition to the classes of persons last above stated, the defendant had issued other so-called free passes, which were free in name only, for in reality there was some consideration therefor passing from the recipient to the defendant, such as those issued to newspaper proprietors, editors and reporters, in exchange for advertising, to hotel proprietors, to ice dealers and milk dealers and to some other persons who are claimed to stand on special ground of right.

As to these latter classes of persons, the investigation has thus far brought out some of the facts, but would have to be extended to enable us to pass a satisfactory judgment upon them. To avoid the delay which a proper and full investigation of these classes would occasion, and in view of their minor importance, and yet perhaps greater difficulty of decision, and of the urgency that the defendant should be informed before the close of the present calendar year of our decision so far as we are able to render it at the present time, we have concluded to hold the case as to the passes

issued to the last-mentioned classes for such further investigation as may be necessary to put us in full possession of all the facts before finally passing upon them, and in the meantime to issue an order applicable to the classes first mentioned, in accordance with the construction of the law as above set forth, this being pursuant to practice in other cases.

**WILLIAM H. MACLOON v. THE CHICAGO & NORTH-  
WESTERN RAILWAY COMPANY.**

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Complaint filed December 1, 1890.—Answer filed December 26, 1890.—  
Heard at Chicago, September 23, 1891.—Proposed findings filed October  
2 to 19, 1891.—Decided January 12, 1892.

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1. The provisions of the eighth, ninth, thirteenth, fourteenth, fifteenth and sixteenth sections of the Act to regulate commerce construed in the light of recent decisions in Federal Courts. *Held*, that a procedure for the enforcement of lawful orders of the Commission founded upon controversies requiring trial by jury having been provided by the amendment of March 2, 1889, of the sixteenth section of the Act to regulate commerce, it is the duty of the Commission to pass upon the question of reparation for past damages whenever a claim is made therefor.
2. Defendant's railroad connects at Janesville, Wisconsin, with the Chicago, Milwaukee & St. Paul Railway. Complainant is a merchant doing business at that point and having coal yards on the line of the latter road, but receiving shipments from points on the line of the defendant road, and his financial responsibility is not questioned in this proceeding. Carriers operating in that section of the country are members of a car service association, which has established a rule requiring the payment of demurrage charges when cars are retained by shippers more than forty-eight hours after receiving notice that such cars are in position to unload, and the rule is set forth by the carriers in their bills of lading. Upon all the facts in this case, *Held*, that the action of defendant in refusing, after payment of freight and offer of customary switching charges, to switch two carloads of coal to the connecting line for delivery at the coal yard of the complainant on such line unless he promised in advance to pay any demurrage charges that might be made, regardless of whether they were just or legally enforceable, was unreasonable, notwithstanding complainant had previously refused to pay demurrage charges on other cars switched to his siding, which he had failed to fully unload within the time prescribed by the rule, and defendant by retaining the coal in its possession and demanding such promise from complainant as a condition precedent to the performance of its duty as a carrier subjected the complainant to unlawful prejudice and disadvantage.

*Held, further*, that complainant is entitled to reparation for injuries sustained in consequence of such refusal and neglect of defendant, but, the proof as to the extent of his damages being insufficient, that the case be held open for the present without order, and that upon notice of adjustment by the parties of the question of reparation the petition be dismissed.



*E. M. Hyzer*, for complainant.

*W. C. Goudy*, for defendant.

REPORT AND OPINION OF THE COMMISSION.

*VEAZEY, Commissioner :*

1. The complainant alleges in his petition that he is a resident of Janesville, Wisconsin, and is a retail dealer in coal and other kindred commodities at that place, and a shipper of coal over the line of defendant's railroad from various points outside of the State of Wisconsin to Janesville, particularly from Spring Valley in the State of Illinois.

2. That the defendant is a common carrier engaged in the transportation of persons and property by railroad between various points outside of the State of Wisconsin to said Janesville, and is subject to the Act to regulate commerce.

3. That at Janesville several other persons are engaged in the same kind of business as the complainant and with whom the complainant is in competition; that the coal sheds of the complainant are located on the line of the track of the Chicago, Milwaukee & St. Paul Railway, and are contiguous thereto, and this railroad company has had for a long time in force an arrangement under which there has been and still is an interchange of traffic, and that it has been customary for the last mentioned company to deliver to the side track contiguous to the complainant's shed the property consigned to complainant and coming to Janesville over the railroad of the defendant company. That the same arrangement for interchange of traffic between these railroad companies applies to the other dealers with whom the complainant is in competition, and the defendant so manages its business as to those other dealers that their cars are delivered to them without delay or inconvenience.

4. That on the 29th day of September, 1890, the defendant company denied to the complainant the same and equal facilities upon traffic coming from points outside of the State of Wisconsin and consigned to him at Janesville which it

accorded and still accords to such other persons, competitors of the complainant, in this, that it gave notice to the complainant that thereafterwards it would not deliver any cars consigned to the complainant, the Chicago, Milwaukee & St. Paul Railway Company for transfer to the siding contiguous to the complainant's sheds as had formerly been customary and is still being done for other persons in business competition with the complainant unless the complainant would promise to pay any demurrage on said cars which might accrue after forty-eight hours detention. That the complainant is and has always been willing and ready to pay to the defendant any demurrage which might legitimately arise under his contract for carriage, but avers that the requirement of the defendant that he should in advance make a contract to pay any demurrage which the defendant might impose and which would not be warranted by the contract of the carriage nor included within the contract when the freight was delivered for transportation is an unjust and unreasonable regulation, not only in itself, but an unjust discrimination between this complainant and other persons, its rivals and competitors in business, as well as a denial to him of equal facilities as to the receiving, forwarding and delivering of property to and from its line and the line connected therewith as aforesaid, which it accords to other persons, and that such unreasonable, unjust and discriminating order has never been revoked or modified and is now being enforced.

5. That as an illustration of the unjust and unreasonable treatment of the complainant and as showing the discrimination of which complaint is here made and the denial of the same and equal facilities accorded to others, the complainant shows that previous to said 29th day of September, two carloads of coal had been consigned to the complainant from Spring Valley in the State of Illinois, and passed over the line of the defendant's road to Janesville aforesaid, arriving there on that day, but the defendant refused to deliver these cars to the Chicago, Milwaukee & St. Paul Railway Company for transfer to the complainant's sheds unless the com-

plainant would make the contract as to demurrage as above set forth, which the complainant refused to do, and the defendant retained the property, and now has it in its possession.

Prayer: That the defendant may be ordered to cease and desist from its said discrimination against the complainant and be required to furnish, without requiring any unreasonable agreement on the part of the complainant, the same and equal facilities as to the receiving, forwarding and delivering of property consigned to him that it accords to other persons by whom it may be employed to transfer property under substantially similar circumstances and to make reparation to the complainant for the injury which it may be found to have done to the complainant.

In paragraphs 1, 2 and 3 of the answer the defendant admits the facts stated in paragraphs 1, 2 and 3 of the complaint, except that it denies that there is any express arrangement about the interchange of traffic, as stated in said paragraph 3.

As to the facts stated in paragraph 4 of the complaint, it denies the refusal to the petitioner of the same and equal facilities as therein alleged, but admits that it did refuse, on the said 29th day of September, to transfer the two carloads of coal as therein alleged unless the complainant would promise to pay the *usual and customary* charges for detention of the cars after forty-eight hours, the same as was charged to all other shippers and consignees; and, further answering this part of the petition, says that a short time prior to the said 29th day of September the defendant transported to Janesville some cars loaded with stone, which were placed under the direction of complainant on the team tracks of the complainant, to be unloaded by him according to the custom in such cases, and that he neglected to unload them within the forty-eight hours, and thereby detained them beyond that time, and refused to pay demurrage for such detention; and thereupon notice was given to him that no cars with freight consigned to him would be switched to the St. Paul Railway for delivery to him at his sheds, on the

line of the company, until he would promise to pay the usual rates for the detention of cars for a longer period of time than forty-eight hours, and that when these two carloads of coal arrived, which the complainant requested should be switched to the St. Paul Railway for delivery, he was informed by the agent of the defendant that unless he would promise to pay for the use of said cars after forty-eight hours, in case they should be detained for a longer period than that, that the cars would not be switched to the St. Paul Railway, and the complainant refused to make any such promise, but asserted that he would not pay any charges for demurrage or detention of any cars at any time; whereupon the agent of the defendant caused the said two cars of coal to be switched on to the team tracks of the defendant, for the petitioner to unload, which was the place where, according to the uses and customs prevailing in business of this defendant, cars loaded with freight and consigned to Janesville were placed, but the complainant refused to unload the same, and after they had been standing there for seventeen days the defendant by its employes unloaded the coal and stored it for the use of the petitioner; and in further answer the defendant sets forth the fact in respect to the custom of charging demurrage for detention of cars, and the necessity for such regulation in order to secure speedy return of cars to traffic and thereby accommodate the public and shippers. The defendant further denies any discrimination against the petitioner, and any liability to pay for the detention of the cars.

In addition to those facts averred in the complaint and admitted in the answer, it further appeared as follows:

The roads operating in the section of the country in which the shipment occurred have organized an association called the Wisconsin and Michigan Car Service Association, for the purpose of keeping the various car mileage accounts between the several roads, and also with authority to establish such rules as may be necessary to ensure the speedy unloading and return of cars. With this latter object in view the Car Service Association issued instructions to the agents of the roads to charge demurrage for cars detained by shippers for

more than forty-eight hours after notice that they were in position for unloading; of this regulation the complainant was made aware before the controversy arose in regard to the two cars of coal above mentioned.

The bill of lading upon which this coal was shipped contained this clause :

“ All carload freight shall be subject to a minimum charge for trackage and rental of \$1 per car for each 24 hours detention or fractional part thereof, after the expiration of 48 hours from its arrival at destination.”

Such provisions in the bill of lading or established as a general regulation by car service associations for the purpose of preventing delay or unreasonable detention of cars from service, have been held in some recent cases in the courts to be reasonable; but, whether reasonable as a general regulation or as to any particular shipment or detention, we are not asked to determine in this case, because the reasonableness of the clause in this bill of lading and of the general regulation of this Car Association are not called into question in this particular shipment.

Previous to the arrival of the two cars of coal at Janesville, consigned to the complainant on the 29th day of September, 1890, two carloads of stone had been delivered to the side-track of the complainant, and were not wholly unloaded by him within the forty-eight hours' limit, and demurrage was demanded, which he refused to pay. This fact was reported by Mr. Raynous, who was the local agent of the defendant at that place, to Mr. Butterworth, the manager of the Car Service Association, and he instructed Mr. Raynous to serve a notice upon the complainant in respect to the turning over of cars to the St. Paul road to be switched to the complainant's yard; and thereupon Mr. Raynous, on the 22d of September, 1890, wrote a letter to the complainant, the body of which is as follows:

“ I am requested by Mr. F. A. Butterworth, Manager of the Wisconsin and Michigan Car Service Association, to notify you that until such time as you will agree to pay all

car service charges that may accrue, no cars will be switched to the C., M. & St. P. road for you."

On the 29th day of September, being a few days subsequent to this letter, the two carloads of coal having arrived, complainant had a conversation with Mr. Raynous in regard to the delivery of the same. Both these parties agree in their testimony that the complainant requested that the cars be switched to the St. Paul road and to his side-track thereon at his yards for unloading by him. There was further conversation at different times during the three days, September 29, 30, and October 1st, between the complainant and Mr. Raynous and Mr. Raynous' clerks, part of which was by telephone, in respect to the payment of demurrage on those carloads of coal.

At the close of the testimony on the hearing, counsel for the complainant made this statement: "I do not think it necessary to argue this case because it is very simple; it arises over refusal of Mr. Macloon to agree in advance as to what he would do. The company wanted him to promise in advance to pay the demurrage and he would not do that, and the company would not deliver the cars."

Thereupon counsel for the defendant said: "I cannot quite agree with that statement. The Commission understands our position. We understood that this man would not pay demurrage under any circumstances. Now, if he is willing to pay them there is no controversy."

The complainant then paid the freight and said he was ready to pay the charges for the switching which he requested. Mr. Raynous said that he understood that the complainant would not agree but refused to pay any demurrage. The complainant testified in substance that he did not refuse to pay any demurrage. The point of difference between them was the claim on one hand that the complainant refused to pay any demurrage under any circumstances, and on the other that he would not promise in advance to pay demurrage that might be charged, regardless of whether it was a just charge or was legally enforceable under the contract of

shipment or rules of the Car Service Association. We think it probable that Mr. Raynous understood the refusal to be as broad as the defendant claimed, and that it was also probable he did not intend to be understood as exacting a promise to pay other than just and legally enforceable charges, but we think and find that the complainant did understand that this exaction was a condition precedent for switching the cars as requested, viz., a promise to pay any charges that might be made, and that he was so warranted from what was said, taken in connection with the notice previously received. A promise to pay what was legally enforceable was of no additional value to the existing legal obligation; therefore, the complainant would naturally infer that Mr. Raynous was seeking a promise of something in addition, and the language of Mr. Raynous, under the circumstances, seems to us to warrant this inference. Such exaction as we find was made was unreasonable and did not justify the refusal to switch the cars. No question is made but that the complainant was financially responsible and known to be such by the other party. We fail to find that there was any intention to discriminate against the complainant or to exact demurrage charges that were unjust; but we find that the complainant was justified in understanding the exaction as he did and was therefore warranted in refusing to comply therewith. It is not claimed in behalf of the defendant that any other dealer in coal in Janesville, or indeed shipper of any kind of merchandise was subject to the exaction which we find was made of the complainant. The case therefore comes under the prohibition of the third section, which forbids the subjection of any particular person, company, firm, corporation or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. It is agreed that the cars were not switched as requested and that the defendant still has possession of the coal. The complainant claimed reparation in his complaint but did not make proof of the amount of the damage which resulted to him by the failure of the defendant in its duty. Has he a right to have this claim passed upon by the Commission? The same question has been pressed upon the



attention of the Commission in other cases pending at the same time with this case.

The provisions of the 8th, 9th, 13th, 14th and 15th sections of the Act to regulate commerce seem clearly to indicate the intention of Congress that the Commission should investigate and report upon the question of reparation to complainants for damage sustained by the carrier's illegal conduct in the past, as well as upon the mere naked question of a violation of the law.

But an attentive consideration of the 16th section as it originally stood, and which was intended to provide machinery for enforcing the orders of the Commission shows that no provision was made for enforcing its order in the matter of reparation for past damages. This conclusion results from the fact that proceedings to enforce the Commission's orders were by the terms of the section confined to the equity side of the Court, and contemplated the use of injunctive process alone; whereas, if the confirmation of the Commissioner's award of past damages had been the object in view, provision doubtless would have been made for proceedings on the law side of the Court and for an ordinary judgment and execution as in actions at law.

Besides this, it seems clear that where in any case the sole question involved is one of reparation for past damages, a constitutional right to jury trial exists, and the 16th section failed to provide for jury trial in any case whatever.

Considerations of this character were adverted to by the Commission in its First Annual Report in the following language :

“ In none of the cases so far decided by the Commission has it felt called upon to order reparation to be made for past injury. Most of the cases were such as to present no case for reparation—they looked only to the establishment for a rule for the future. Some complaints, however, were evidently made in the expectation that the Commission might proceed to give damages upon a grievance that would support an action on the common law side of the Federal court. The Commission, when such complaints have been brought to a hearing, has not discovered in the statute a purpose to confer upon it the general power to award damages in the cases of which it may take cognizance. The failure to provide in terms for a judgment and execution is strong negative testimony against such a purpose; but what is per-



haps more conclusive is that the act must be so construed as to harmonize with the seventh amendment to the Federal Constitution, which preserves the right of trial by jury in common law suits."

In the case of *Councill v. Railroad Co.*, 1 I. C. C. Rep. p. 339, Inters. Com. Rep. 638, decided December 3, 1887, the complainant alleged that he had been subjected to unreasonable prejudice and unjust discrimination, and claimed before the Commission large money damages for injuries done him. The Commission found that he had been subjected to unreasonable prejudice and unjust discrimination as alleged, and ordered the carrier to cease and desist therefrom. But the Commission declined to go into the question of damages to the complainant, saying: "Under the seventh amendment to the Constitution of the United States, the defendant in any case at common law is entitled to a jury trial. This claim in its nature is an action of trespass, and therefore presents such a case. . . ."

In the case of *Heck & Petree v. Railroad*, decided February 15, 1888, 1 I. C. C. Rep. p. 495., 1 Inters. Com. Rep. 775, complaints charge that defendants unjustly discriminated against them by refusing to haul their coal, and prayed that their rights as shippers of coal might be secured by the order of the Commission, and that large pecuniary damages be awarded them for losses sustained by the defendant's refusal to ship their coal. The defendants were ordered by the Commission to receive and forward complainant's coal when offered for transportation, but as stated in the opinion: "The claim for pecuniary damages made by the complainants was not entertained on the hearing because it presents a case at common law in which the defendants are entitled to a jury trial."

In the case of *Riddle, Dean & Co. v. Railroad*, decided February 23, 1888, 1 I. C. C. Rep. 594, 1 Inters. Com. Rep. 787, the defendants were adjudged to have violated the Act in refusing to furnish cars for the transportation of complainant's coal; but it was said in the opinion: "The Commission has repeatedly held that it can make no award of

damages in a case like the present for the reason that the defendants are entitled to have the amount assessed by a jury."

By Act of March 2, 1889, the 16th section was so amended as to provide in cases involving the right to jury trial for proceedings to enforce the Commission's orders on the law side of the Court, and for a trial and judgment as at common law. The correctness of the position taken by the Commission as above explained was thus recognized by Congress, and the obstacle in the way of the Commission's recommending reparation for past damages to complainants was removed. But this Act expressly provided that it should have no application to proceedings pending before the Commission at the time of its passage.

In the case of *Rawson v. Railroad Co.*, decided November 13, 1889, 3 I C. C. Rep. p. 266, 2 Inters. Com. Rep. 626, the decision was rendered after the amendment of the 16th section above referred to, but the case had been pending at the date of the passage of that amendment. The petitioner had prayed the Commission to award him reparation for past damages, but this was refused, the portion of the opinion relating to that question being as follows:

"As to the reparation claimed, prior to the amendment of the 16th section of the Act to regulate commerce of March 2, 1889, we held in several cases, that as the statute provided for no trial by jury in the courts to enforce our awards in controversies such as were triable at common law, and where more than twenty dollars was involved, we could award no reparation in consequence of the provisions of the seventh amendment to the Constitution of the United States. The amendment of the statute of March 2, 1889, was made to cover this feature of the statute, but the amendment expressly provides that it shall have no reference to proceedings pending at the time the amendment was adopted; and this proceeding was pending at that time. The amendment to this effect is found in the proviso in section 22 of the statute as amended, and is in the following language: "Provided that no pending litigation shall in any way be affected by this Act. The statute, therefore, leaves the petitioner to enforce his claim for

reparation in the courts as he may be advised, and accordingly this petition is dismissed without prejudice."

In the most of the complaints brought before the Commission since the amendment of the 16th section, as described above, the question of reparation for past damages has not been involved. In some cases where that question was involved, its determination seemed so peculiarly appropriate for a jury that the Commission did not consider it, deeming it best for all parties that the question of the amount of damages should be settled by a jury in the regular courts.

It has, however, since been held by the Circuit Court of the United States for the Western District of Pennsylvania, in the case of *Riddle, Dean & Co. v. Railroad*, that where the question of reparation for past damages has been submitted to the Commission, it can not be subsequently made the subject of a suit in court even though the Commission has expressly declined to pass upon it. A like opinion has been intimated by the Circuit Court of the United States for the Southern District of Iowa.

Although regulation for alleged violations of some of the provisions of the first four sections of the Act to regulate commerce is the principal and important remedy sought in most complaints, yet reparation in many cases is not an unimportant incident. Therefore, so long as these rulings of the courts last mentioned stand as the law (and we now intend no intimation that they are not sound) it seems to us a plain duty to complainants to pass upon the question of reparation for past damages whenever a claim is made therefor. Indeed it seems to us to rise above mere discretion and become an imperative duty; otherwise the dual remedy which Congress seemed to contemplate in a single proceeding would be defeated, and even more, one of the remedies is lost under an application of the somewhat technical doctrine of the election of remedies operating in contravention at least of the spirit of the enactment as well as the demands of justice.

Owing however to the fact that the proof as to the extent of damages is inadequate, as above suggested, the case would have to be held for further proof on the point before a recommendation could be made thereon.

There seems to be no necessity for any order on the point of discrimination or failure to furnish equal facilities as prayed for in the complaint, as it is found that this is the only instance wherein the defendant has refused to switch the cars and that this instance arose apparently from a misunderstanding. We also think the matter of reparation is one the parties are likely to adjust, and we will therefore hold the case without an order for the present. If notice that the question of reparation is adjusted is received, the petition will be dismissed.

CHARLES P. PERRY v. THE FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY; THE SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY; THE CHARLESTON & SAVANNAH RAILWAY COMPANY; THE NORTHEASTERN RAILROAD COMPANY OF SOUTH CAROLINA; THE WILMINGTON, COLUMBIA & AUGUSTA RAILROAD COMPANY; THE WILMINGTON & WELDON RAILROAD COMPANY; THE SEABOARD & ROANOKE RAILROAD COMPANY; THE PETERSBURG RAILROAD COMPANY; THE RICHMOND & PETERSBURG RAILROAD COMPANY; THE RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY; THE ALEXANDRIA & FREDERICKSBURG RAILWAY COMPANY; THE ALEXANDRIA & WASHINGTON RAILWAY COMPANY; THE BALTIMORE & POTOMAC RAILROAD COMPANY; THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY; THE PENNSYLVANIA RAILROAD COMPANY, COMPRISING THE ATLANTIC COAST DESPATCH LINE.

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Complaint filed January 5th, 1891.—Answers filed January 30th to February 19th, 1891.—Hearing had March 31st and April 1st, 1891.—Additional testimony filed July 17th, 1891.—Briefs filed September 19th to October 30th, 1891.—Decided January 28th, 1892.

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1. The Act to regulate commerce expressly requires that transportation charges shall be reasonable, and empowers the Commission to enforce its provisions. Wherever the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable. The Commission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order and enforce a rate that is reasonable. The

power to determine and declare what is a maximum reasonable rate also results from those provisions of the Act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference between the rate actually charged and the reasonable rate which should have been charged.

2. Divisions of a joint rate among the carriers are sometimes inquired into for the purpose of ascertaining, from the divisions, whether a rate unreasonable in itself may not be traced to the inequality of such divisions.
3. The possible influence of water competition upon rates for the transportation of oranges and the non-existence of such competition in the carriage of berries, because the latter cannot be carried by water in any considerable quantities, does not authorize defendants to take advantage of the situation and charge unreasonable rates on berries.
4. Rates on interstate shipments from points on the initial carrier's line were shown to be greater for the shorter distance from Lawtey than for the longer distance over the same line in the same direction from Gainesville, and defendants were ordered to bring their rates from Lawtey and other points in that territory in conformity with the provisions of the 4th section of the Act to regulate commerce. The fact that the initial carrier's line joins its connecting line at both Callahan and Gainesville and that traffic from Lawtey, an intermediate station, may be routed through Gainesville, the longer distance point, does not authorize defendants to charge the higher rate from Lawtey when the traffic from that point and from Gainesville is in fact routed through Callahan.
5. Carriers should not treat shipments of traffic intended to be continuous between interstate points as consisting of two kinds of service independent of each other, the one to or from a so-called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate. *Re Tariffs and Classifications of Atlanta & West Point R. Co. et al.*, 3 I. C. C. Rep. 46; 2 Inters. Com. Rep. 461; and *Hamilton & Brown v. Chat.*, *Rome & Col. R. Co. et al.*, 4 I. C. C. Rep. 686; 3 Inters. Com. Rep. 482, cited and affirmed.
6. Circumstances and conditions which affect the question of reasonable rates on strawberries from points in Florida to New York City, including such characteristics of the traffic and its transportation as volume, weight, bulk, value, perishability, risk, expense of handling and quick carriage in perishable freight trains, and return of empty cars, stated and compared with those surrounding the transportation of oranges and other traffic carried by defendant in the same trains. Upon the facts appearing in this case, *Held*, that defendants' rates for services rendered in receiving, forwarding by their perishable freight trains, and delivering strawberries from Florida points to New York City should not

exceed \$3.33 per hundred pounds or \$1.66½ per crate of fifty pounds from Callahan, Fla., to New York, and from Lawtey, Hammock Ridge, and other stations more distant from New York than Callahan, the total through rates should not be unreasonably in excess of the charge from Callahan, and should be filed with the Commission and published according to law.

7. Where claim for reparation is made in a complaint of unreasonable rates the burden of proof is on complainant to show the facts connected with the claim, and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant in such cases it will decline to award reparation.
8. If defendants' rates on strawberries had been so excessive and unjust as to have rendered complainant's crop valueless to pick and market, it would not entitle him to reparation for loss thereby sustained, because such damages would be too speculative, uncertain and remote.

*Charles P. Perry*, for complainant.

*J. A. Henderson*, for Florida Central & Peninsular R. R. Co.

*R. G. Erwin* and *John E. Hartridge*, for Savannah, Florida & Western Railway Co. and Charleston & Savannah Railway Co.

*W. G. Elliott*, for Northeastern R. R. Co. of S. C., Wilmington, Columbia & Augusta R. R. Co., Wilmington & Weldon R. R. Co., Petersburg R. R. Co., and Richmond & Petersburg R. R. Co.

*L. R. Watts*, for Seaboard & Roanoke R. R. Co

*James A. Logan*, for Alexandria & Fredericksburg R'y Co., Alexandria & Washington R'y Co., Baltimore & Potomac R. R. Co., Philadelphia, Wilmington & Baltimore R. R. Co., Pennsylvania R. R. Co., and Richmond, Fredericksburg & Potomac R. R. Co.

#### REPORT AND OPINION OF THE COMMISSION.

**VEAZEY**, *Commissioner* :

The complainant is a fruit and vegetable grower at Hammock Ridge, Florida, and the defendants, with a single exception, are the various railroad companies operating an "all-rail" line of transportation, from Florida points to the City of New York, known as the Atlantic Coast Despatch Line.

The complaint is directed solely to the rate of five dollars per hundred pounds, charged by the defendants for the transportation of strawberries from Hammock Ridge aforesaid, to the City of New York, this rate being alleged to be "unlawful, extortionate and unauthorized," and to the rate on the same commodity from Lawtey in Bradford county, which is said to be in violation of the fourth section of the Act, in that the tariff rate is greater from that point to New York, than from Gainesville, which is 32 miles farther distant.

The complainant averred that the tariff charged was prohibitive of the business of raising strawberries in Florida for the New York markets.

In the complaint as originally filed, it was alleged that the defendants operated the line, under "a common control, or management for continuous carriage or shipment," but on the 7th of February last, the complainant moved to amend, by striking out the words, "control or management," and inserting in lieu thereof, the words, "control, management or *arrangement*;" this motion was allowed on the 16th of that month, and the defendants were severally notified thereof immediately afterwards.

The Charleston & Savannah Railway Company, and the Savannah, Florida & Western Railway Company filed their joint answer on the 30th of January; the Washington Southern Railway Company as successor of the Alexandria & Fredericksburg Railway Company and the Alexandria & Washington Railway Company, the Baltimore & Potomac Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company and the Pennsylvania Railroad Company filed their joint answer on the day last named; the Richmond, Fredericksburg & Potomac Railroad Company filed its answer on the 31st of that month, the Seaboard & Roanoke Railroad Company filed its answer on the 2d of February, the Northeastern Railroad Company of South Carolina, the Wilmington, Columbia & Augusta Railroad Company, the Wilmington & Weldon Railroad Company, the Petersburg Railroad Company, the Richmond & Petersburg Railroad Company, filed their joint answer on the 5th of



February, and the Florida Central & Peninsular Railroad Company filed its answer on the 19th of February.

All the answers, in varying phraseology, denied that they were engaged in the business "under a common control and management," which was the allegation of the complaint at the time the answers were filed; none of the defendants, however, since the incorporation of the amendment of February 16th, as above set forth, have filed supplemental answers, so that it may be well assumed that the defendants concede that the business is done under a common "arrangement" for a continuous carriage or shipment. *Boston Fruit & Produce Exchange v. P. R. R. Co. et al.*, 4 I. C. C. Rep. 664; 3 Inters. Com. Rep. 493.

It is unnecessary to set forth the answers of the defendants, for they may be summed up as specifically traversing the allegations of the complaint, with the exception of the charge as to the greater freight rates from Lawtey than from Gainesville in respect to which the F. C. & P. R. R. Company in its answer, in explanation of the freight from Lawtey, says that, so far as that company is concerned, the rates are made by charging its local rates from Lawtey to Callahan, Jacksonville and other junctional points, from which through rates are made by its connections to New York, and other markets, and that the rates from Gainesville are dictated by the Savannah, Florida & Western Railway Company and its connections.

The last named company in its answer says that the allegation in regard to the comparative Lawtey and Gainesville rates, does not relate to any matter over which the company has any control and is irrelevant and therefore does not call for an admission or denial.

The Seaboard & Roanoke Railroad Company denies in its answer that it is engaged in the transportation of passengers and property wholly by railroad between Hammock, Florida, and New York, or that it received any portion or share of the freight charged and paid on the shipments referred to in the complaint. This is found to be the fact, and as to this defendant the complaint must be dismissed.

There are five lines of transportation between the south-

eastern and northeastern sections of the country. Three of these, the Mallory Line, the Clyde Line and the Ocean Steamship Company's Line, are carriers by water from points on the coast, reaching the interior by traffic contracts or arrangements with the railroads. One of the lines is formed by a combination of railroads to Portsmouth, Virginia, and thence by water, or partly rail and partly water to the northeast, and is known as the Atlantic Coast Line. The other line is that which is made up by agreement between the defendants in this proceeding, except the Seaboard & Roanoke Railroad Company, and is an "all-rail" route, known as the "Atlantic Coast Despatch Line."

On the question of the reasonableness of the rate on strawberries from Florida points to New York, the material facts established by the testimony are as follows:

The rate sheets of the defendants on file with the Commission show that the charge per crate of 32 quarts from Callahan to New York, was in the year 1890, \$2.01, or a little less than 6 3-10 cts. per quart, and a number of expense bills paid and accounts of sales rendered by New York commission merchants during that year, which were put in evidence by the complainants, prove that this was the amount actually paid. On March 22, 1891, this rate was advanced to \$2.35 per crate, or about 7½ cents per quart. Some of the witnesses for complainant testified that the freight charges to New York had never been less than 10 cents per quart, but in this they were obviously mistaken, at least as to the years 1890 and 1891. The error doubtless arose from including in the statement certain items of expense for which the defendants were not responsible.

The very unsatisfactory situation in which the parties left the evidence submitted at the hearing as to the rates actually charged from the different points, has made it very difficult from that testimony alone to arrive at a certain conclusion as to just what the rates in effect at the time of the hearing were. The rates have been frequently changed and the Florida Central & Peninsular Railroad Company, although forming with the other defendants a through line, have not

filed their tariffs as required by section six of the Act. There was some confusion in the testimony of the witnesses, particularly that in regard to the rates; some had been withdrawn, but were testified to as being in effect. However, it did appear from the testimony that the rates from Lawtey were 50 cents per crate greater than from Callahan. The files of the Commission show the rates from Callahan and Gainesville, and from those files and the testimony above referred to, the following table is made up, showing the rates per crate from the different stations to New York:

From	1890.	Jan. 28, '91, to Feb. 5, '91.	Mch. 22, '91, to Apr. 18, '91.	Apr. 18, '91, to date.
Callahan . . . . .	2.01	1.66½	2.35	2.01
Lawtey . . . . .	2.51	2.16½	2.85	2.51
Gainesville . . . .	2.21	1.83½	2.55	2.21

From the foregoing table it will be seen that no rate is given for the time between February 5th, 1891, and March 22d of that year. This happens because on the fifth of February the rates were withdrawn, and in such a way that it would seem that the intention was to restore the rates which were in force during 1890, but it is unnecessary for present purposes to determine the question.

Callahan is one of the junction points of the Savannah, Florida & Western Railway with the Florida Central & Peninsular Railroad. It is situated 56 miles from Waycross, which is the junction point of the branch roads which lead from Callahan and Gainesville. Lawtey is a station on the Florida Central & Peninsular road, 39 miles southwest of Callahan and 32 miles northeast of Gainesville. Hammock Ridge is a station on the same road five miles southwest of Gainesville.

Callahan is a so-called "basing point," and the rate from that place to New York on berries was when the complaint was filed and now is \$2.01, as above stated, per crate of 50 pounds. The rate from Lawtey is \$2.51 per crate. The rate from Gainesville is \$2.21 and seems generally to have been 20 cents per crate greater than the rate from Callahan, and 30 cents less than the rate from Lawtey. There is nothing

on file with the Commission to show what the rates are or have been from Hammock Ridge, but from one of the Exhibits filed in the case, it appears that at the time of certain shipments the rate charged from Hammock Ridge was the same as from Lawtey.

It would be more satisfactory to have had these points definitely proved, but in view of the practical concessions stated, it is not indispensable to the determination of the question under consideration.

This case was heard in connection with another case in which the complaint was directed against the rate on strawberries over defendants' lines from Callahan to New York, and it was understood at the hearing and so stated by the Commission, that the testimony taken would be considered in either case as far as applicable. Callahan is, as above stated, a basing point under the defendants' system of charging local rates from some points, such as Hammock Ridge and Lawtey, to a basing point, such as Callahan or Gainesville, and from thence a through rate to destination. In view of the fact that local rates from so-called local points in Florida are not distinctly brought out in the evidence, and of the further fact that the force of the testimony was centered upon the rate from Callahan, on account of the complaint in the other case and of defendants' system of rate-making to and from basing points as particularly shown in this case, it is necessary to the proper disposition of this case to find the facts in regard to the transportation from Callahan to New York.

In addition to the foregoing rates charged by the defendants, the other expenses of shipping and marketing are the refrigerator charges hereafter explained, of 69 cents per crate, or a little over two cents per quart, commissions for selling of 10 per cent. on gross sales, and a small amount for cartage. According to the estimates of the only witness who testified on that point, the aggregate cost of the production and the packing and picking of the berries, including crates, and the freight charges for sending them to the New York market (exclusive of commissions), is about 15 cents per quart.

It is impossible to make a reliable finding upon the evidence as to the average price obtained for Florida strawberries in the New York market. In the early part of the season, 50 cents per quart is not infrequently realized. And in some special cases it would seem that even higher figures are secured; but later in the year, when berries come in from Charleston and places still further north, the price falls rapidly and soon reaches a point which forbids profitable shipments at present rates. Several accounts of sales in the evidence, in the months of February and March, 1890, show prices ranging from 14 to 30 cents per quart; one sale in April, 1890, in New York at  $16\frac{1}{2}$  cents, and one in Philadelphia the same month at 10 cents. The evidence however tends to show that better figures than these are usually obtained in the months of February and March, although the testimony on this branch of the case is very unsatisfactory.

The strawberries in question are shipped in crates, each having an estimated weight of 50 pounds and containing 32 quart packages. Early in the season, while the weather remains cool, a few are shipped by express, but the highly perishable nature of the commodity requires special means for its preservation during transit which the railroad companies do not themselves furnish.

The common practice now is for certain refrigerator car companies to furnish to the growers cars specially prepared for the shipment of strawberries to the northern market. The refrigerator company makes a charge to the shipper of 69 cents per crate (requiring a minimum load of 100 crates) which covers the use of the car, the necessary ice, and needful attention to the fruit during the journey. The agreement between the refrigerator company and the railroads is that the former undertakes to furnish not less than 100 crates of berries in each car, while the latter pay the usual mileage of  $\frac{3}{4}$  of a cent a mile each way for the use of the car. Occasionally as many as 300 crates are carried in a refrigerator car, but the average number is a little less than 200, or about  $4\frac{1}{2}$  tons of paying freight to the car. The average load of other freight over the same lines is a little less than ten tons per car, that of oranges being 19,000 pounds, or  $9\frac{1}{2}$  tons. The

refrigerator cars being adapted to this special service only, do not take return loads.

The distance from Callahan to New York is a little over 1,000 miles. At the charge of \$80.40 per ton, in 1890, the rate per ton per mile, would be about 8 cents, while at the charge of \$94.00 per ton, in force during a portion of 1891, the rate per ton per mile, would be 9.4 cents. The strawberry cars, however, carry not more than one-half of the average load of a freight car, and, almost without exception, are returned empty. As the average load of berries the past season was only  $4\frac{1}{2}$  tons, the average amount received per car at the \$2.35 rate (exclusive of refrigeration and other expenses paid by the shipper to the refrigerator company), was \$423.00, out of which the railroads paid for the mileage of the cars, for the round trip about \$16.00, leaving a net income for the carload of about \$407.00. But as the mileage is in effect doubled by the return haul of the empty cars, at an expense nearly as great as if they were loaded, a fair comparison with revenue from other traffic, where cars are not returned empty, would show a rate per ton per mile, on strawberries, one-half the figures above given, though still considerably in excess of the average receipts of these lines from their general freight business. The fact of the cars returning empty, applies also to all of the perishable freight, carried in the special trains furnished by the defendants for the Florida business, where the transportation is "all-rail" as in the case of strawberries, fruit, oranges, vegetables and other perishable articles, which are carried northward on the so-called perishable freight trains. The through rate in question does not appear to be divided between the different roads on the mileage basis; but this is not material in this case. The divisions of rate among carriers are sometimes inquired into, for the purpose of ascertaining from the divisions whether a rate unreasonable in itself may not be traced to the inequality of such divisions.

The risk to the carrier in the strawberry traffic is very great. They are shipped "released"; that is to say, the contract between the carriers and the shippers is to the effect that the shipper released the carrier from the payment of damages, if

the shipments fail to arrive at destination in good order, but the courts have very generally interpreted such contracts as meaning that the shipper makes his contract upon the assumption that the service will not be performed negligently, and have therefore held the carriers to the payment of damages where the loss occurred through their negligence. In the case of strawberries, when an accident occurs causing the wreck of a car, the loss from the character of the property is larger and with less salvage than in the case of most other perishable freight. Hence the risk of the shipment is greater as to strawberries than other fruit.

The volume of the strawberry business is very small in comparison with other freight. In 1891, the total number of cars passing over the Atlantic Coast Despatch Line, was only 23 cars, and the average load only 195 crates. The entire revenue of the carriers from this traffic is inconsiderable, and in view of its limited amount, and the exceptional risk and attending expense, its transportation is claimed by the carriers as of doubtful desirability, even at the present rates.

The freight rate on a carload of oranges, consisting of nine tons and a half from the so-called basing points in Florida, among which points is Callahan, has been about \$130.00, and in the orange as in the strawberry traffic the cars are generally returned empty, especially those on the perishable freight train; the exception being that on the line of the Savannah, Florida & Western road, which has an extensive business from Savannah to Florida points, many cars which come from northern points to Savannah without loads are there loaded for south-bound business.

The carriers collect from the shippers 69 cents per crate over and above the charges for transportation proper, which is paid over by the carrier to the Refrigerator Car Company, together with three-fourths of a cent a mile each way for the use of the cars, that being the same amount which the carriers pay to other carriers and companies when they use any other than their own cars; from this it appears that the car-service costs the carriers the same amount for strawberries as for oranges, the extra attention and the refrigeration, which



the former require, being practically paid by the shipper to the Refrigerator Car Company.

By the all-rail route, the one which is under consideration in this case, there is given to certain kinds of traffic a special service. It all comes under the class of "perishable freight." It includes oranges, berries, peaches and other fruits and vegetables, and all that class of commodities which require special care, attention and expedition on the part of the carriers; and upon the Atlantic Coast Despatch Line, which performs the service from Callahan to New York, the special train, is known as "the perishable freight train," and has a quickened schedule, taking oranges, which do not require refrigeration, in the same trains with the other commodities which do require refrigeration, and other attention during the transit. Besides the difference as to refrigeration and so forth, above alluded to, oranges and some of the other perishable articles can be handled on trucks, at the junction and terminal points, while berries have to be loaded and unloaded by hand. In this case it was shown that the berry traffic was given a different service over the line of the Florida Central & Peninsular Railroad, is being carried on cars attached to the regular passenger trains to Callahan, where the cars were turned over to the roads which make the northern connections. In all other respects than those mentioned, the service as to oranges and strawberries, when carried in the same trains, is identical; but there are some surrounding conditions, independent of the actual service performed, which should be taken into account in the making of a reasonable rate. An expeditious service is absolutely necessary to the berry traffic; this is not so necessary in the case of oranges, which not only may be, but frequently are carried by water, as they can be kept for a much longer time, only requiring proper ventilation. The orange traffic from Florida to the northern cities amounts to many thousand carloads, and so far as the traffic to New York is concerned, could be taken from the coast by water to that city, and undoubtedly would be so taken, if there was a great disproportion between the rail and water rates. The orange traffic is therefore conducted in face of a possible competition which may have



had influence in making the orange rate. But this cannot be said of berries because they cannot be taken in any considerable quantities by water. This fact, however, does not warrant the defendants to take advantage of the situation, and make unreasonable rates for the transportation of berries. It in a measure, however, meets the argument which is made by comparing the orange with the berry rate, other than that it may be presumed that the orange business is not transacted at a loss.

The volume of the traffic is an element usually and properly taken into account in the making of a rate; in this instance, however, it is somewhat lessened in importance by the fact that both oranges and strawberries are taken in the same "perishable freight train," because the actual cost of hauling one car is substantially the same in the case of berries and oranges, and the extra expense of loading and unloading the berries, over the same weight of oranges, above alluded to, is somewhat modified by the fact, when the rate is considered as to a carload of each, that there is but half the number of tons in a carload of berries as in a carload of oranges.

It is upon these facts that the question is to be determined whether the present rate on strawberries between the points named is excessive as alleged, and to what extent.

Notwithstanding the Commission has held from the time of its organization to the present time that the statute requires it to ascertain and determine what the reasonable maximum rate is on a complaint alleging violation by reason of excessive freight charges, yet some carriers continue to deny the soundness of this view of the law. But under the renewed presentation of their argument it still seems plain to us that regardless of where the general power to establish rates may be lodged, the ascertainment of a reasonable rate, where extortion is charged, necessarily involves the determination of how much the existing rate is in excess of what is reasonable.

Wherever, therefore, the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable.

The Act to regulate commerce expressly requires that rates shall be reasonable. The Commission is in terms required "to enforce the provisions of the Act." In other words the Commission's power and consequently its duty is to enforce reasonable rates. It is not, of course, asserted that the Act confers on the Commission the general power to prescribe the traffic charges of carriers subject to its provisions. The general scope of the Act, as well as its specific provisions as to complaints to, and investigations and reports by, the Commission, forbid such an interpretation. But where complaint is made to the Commission, or a specific inquiry is instituted by it, on its own motion, and it is found after due notice, hearing and investigation that an existing rate is unreasonable, the Commission is not restricted simply to finding that fact, and forbidding the carrier to continue to charge the existing rate; but it may go further and enforce a reasonable rate. That is, the Commission may, in such case, by clear implication from the language of the law, put in force a reasonable rate. Before it can do that it must necessarily determine what the reasonable rate is.

Not only does this appear to be a necessary inference from the express provisions of the statute, but the practical difficulty arising from any other construction leads almost irresistibly to the same conclusion. This was fully shown by the Commission in the case of *Coxe v. The Lehigh Valley Railroad*, and a brief re-statement of the argument there used may not be out of place here. The contrary view assumes that the Commission, if it find an existing rate to be unreasonably high, should simply so notify the carrier, and order a reduction of the rate, without specifying to what extent. Any reduction would be a compliance with this order, and yet it might fall entirely short of what the circumstances demand. The result must be a renewal of the controversy before the Commission on the very same lines, with a repetition of the proceeding, time after time, until a reduction satisfactory to the Commission is arrived at.

The Commission could, in the meantime, have determined on the first hearing, just as well as on the last, what would be a reasonable rate; and it cannot be supposed that Con-

gress intended such an absurdity as that the Commission should keep its lips sealed upon this vital question, involving parties in repeated and otherwise unnecessary litigation before it.

The power of the Commission to ascertain and declare what is a maximum reasonable rate, in case of a complaint charging unreasonableness, also results from those provisions of the Act requiring the Commission to determine what reparation, if any, should be made by the carrier to any party injured by their violation of the law. The violation may consist in charging unreasonably high rates; and the measure of reparation due to a party is the difference between the rate actually charged and the reasonable rate which should have been charged.

The Commission in order to determine the amount of reparation to be made in such a case must necessarily first determine what is a reasonable rate. The views of the Commission on the question of its duty as to reparation are stated in the recent case of *Macloon v. Chicago & N. W. R. Co.*, 5 I. C. C. Rep. 84; 3 Inters. Com. Rep. 711.

It has therefore been the unvarying practice of the Commission to fix reasonable rates, where on the hearing of a case the circumstances seem to call for such action, or at least to determine the rate any charge in excess of which would be unreasonable.

Among the cases to this effect are the following:

*Evans v. Railway*, 1 I. C. C. Rep. 325; 1 Inters. Com. Rep. 641; *Farrer v. Railway*, 1 I. C. C. Rep. 480; 1 Inters. Com. Rep. 764; *Nicolai v. Railroad*, 2 I. C. C. Rep. 131; 2 Inters. Com. Rep. 78; *N. O. Cotton Exchange v. Railway*, 2 I. C. C. Rep. 375; 2 Inters. Com. Rep. 289; *James & Abbott v. Railway*, 3 I. C. C. Rep. 225; 2 Inters. Com. Rep. 609; *McMorran & Co. v. Railroad Co.*, 3 I. C. C. Rep. 253; 2 Inters. Com. Rep. 604; *N. O. Cotton Exchange v. Railroad Cos.*, 3 I. C. C. Rep. 535; 2 Inters. Com. Rep. 777; *Food Products Cases*, 4 I. C. C. Rep. 48, 116; 3 Inters. Com. Rep. 151; *Harvard Co. v. Railroad Co.*, 4 I. C. C. Rep. 213; 3 Inters. Com. Rep. 257; *Coxe Bros. v. Railroad Co.*, 4 I. C. C. Rep. 535; 3 Inters.

Com. Rep. 460; Delaware State Grange *v.* Railroad Co., 4 I. C. C. Rep. 588; 3 Inters. Com. Rep. 552; Boston Fruit Exchange *v.* Railroad Co., 4 I. C. C. Rep. 665; 3 Inters. Com. Rep. 493.

As above stated the average receipts per car on strawberries, not deducting the car mileage, was, at the time of the hearing, \$423 between Callahan and New York. At the rate complained of and now in force, \$2.01 per crate, the amount per carload is \$361.80. The average on oranges, same train, was \$130, at the time of the hearing of the case. We might well assume that the orange rate was reasonably profitable, because it was the result of a raise of ten cents a box, made about two years ago on a rate that had been in existence about four years. Besides, the orange rate was under investigation at the same time with the strawberry rate and the Commission found it was excessive and ordered a reduction of five cents per box, bringing the rate of an average carload to about \$120. Therefore the actual profit to the carrier on an average carload of strawberries which made the trip without mishap would be whatever there was of profit in an orange car rate with the addition of the entire excess of the strawberry rate over the orange rate, deducting the extra expense in drawing the strawberry car on the passenger train on the F. C. & P. Railroad, a distance of 39 miles, and in handling the strawberry crates by hand instead of on trucks at junction and terminal points. If the cost of hauling the orange car and handling the fruit from Callahan, which may well be taken for illustration, is something less than \$130, the cost of hauling the strawberry car and handling the fruit is no more, except in the respects just stated, so that the excess of the berry rate over the orange rate would be nearly, if not wholly, profit.

But there are many other considerations than mere cost of drawing the car to be noted in arriving at a just rate for strawberries. This train gave a much quicker service, which undoubtedly was of some advantage to the orange trade, but was not so essential, as in the case of berries, on the score of the perishable character of the fruit. Possibly the train could not have been maintained without utilizing it for the

orange traffic, on account of insufficiency of other traffic. Service like that obtained by the perishable freight train was and is a necessity to the growers of perishable fruit and vegetables of Florida in order for them to reach the northern markets with such products. It requires speed, special train service, rights of way over other trains, extraordinary terminal and junction facilities. These are supplied at large expense. Such train interrupts and interferes with the ordinary and regular business of the carriers. The service is special in all respects.

The matters of difference that should increase the rate on berries over oranges may be briefly summarized thus:

The expense of handling berries at junction or terminal points, berries not being handled with trucks, as are oranges.

Allowance for hauling the berry cars on the passenger trains on line of the F. C. & P. Railroad.

Extra dead weight of refrigerator cars when loaded with berries instead of oranges, owing to the fact that an average berry load is only half an orange load.

Extra risk of loss in case of accident arising from negligence of carrier.

Less value of the oranges.

Less volume of the berry traffic.

Only one-half the weight of the average carload of oranges makes an average carload of berries.

There are other matters not incident to the expense of hauling the trains which should be taken into account.

Apparently, oranges can go by water or ordinary trains, although at some disadvantage as compared with this special train. About the only peculiar feature of orange transportation is ventilation; berries must go by fast train.

Oranges do not require refrigeration, but refrigeration is indispensable in the berry traffic.

The matters in common are:

The same train service from Callahan, and other basing points, in Florida.

The same terminal and other facilities which are provided for oranges, berries and all perishable freight.

In the classification of the defendants' roads constituting the Coast Despatch Line, berries are specified as first-class. The rate on ordinary trains for first-class freight from Callahan to New York *appears* to be \$1.36½ per hundred pounds; the tariffs on file with the Commission do not give the rate on north-bound first-class freight, but do give the rate above stated for south-bound freight from New York to that point. In the case under consideration the traffic really represents a double movement of cars, and for purposes of comparison, it is a matter of indifference whether the berry rate is compared with the north-bound or south-bound rate. In the absence of proof to the contrary they may be assumed to be the same. The extra cost to the railroad companies for the special service given on the perishable freight train, over that of an ordinary freight train, including all the expenses of different kinds above set forth, is very imperfectly shown. Certain facts are proven with distinctness, all are not so, and many of them are so meagerly set forth in the testimony, that an estimate of a just maximum rate is liable to be imperfect. Owing to the double mileage above explained the rate may well be approximately double the first-class. The other facts found warrant a rate of something more than the double first-class; and, upon the case as it stands upon the evidence we think the rate voluntarily put into effect by the carriers on January 28th, 1891, of \$1.66½ per crate, from Callahan to New York, is a just and reasonable maximum rate. Doubling the first-class rate would make the rate \$1.36½ per crate, and in arriving at the result stated, the first-class rate is doubled and 30 cents added thereto.

This would give to the carriers, \$3.33 per hundred weight from Callahan to New York, and from Lawtey, Hammock Ridge, and other stations more distant from New York than Callahan the total through rates should not be unreasonably in excess of the maximum charge prescribed from Callahan, nor otherwise unlawful. Notwithstanding the real service by the special train begins at the so-called basing point, the

rates charged are for through transportation of strawberries from points of shipment, and proper schedules showing what these through rates are from all points on the gathering road in Florida should be regularly filed with the Commission and published according to law. The maximum charges prescribed are for the railroad service proper, and do not include the charge for refrigeration which is now paid by the shipper at the rate of 69 cents per crate.

At the rate of \$1.66½ cents per crate the carriers on an average carload of 9,000 pounds would receive \$299.70. This, as before explained, allows the carriers the full amount which they would charge for first-class freight making the round trip from Callahan to New York and return, besides adding 30 cents per crate for those other matters shown which increase the cost of service.

The conclusion to which we have come in this case is not in conflict with the recent decision of the Commission as to the orange traffic, although the rate we presently allow is greater because of the distinguishing characteristics between the berry and orange traffic as above shown.

But in this case, another question is raised, namely, the alleged violation of the fourth section, in that it is claimed that the defendants make a higher rate from Lawtey to northern and northeastern points than from Gainesville, although the latter place is 32 miles farther distant.

The situation of Lawtey has been stated; it is intermediate between the stations of Callahan and Gainesville on the F. C. & P. Railroad, and is situated 39 miles southwest of Callahan and 32 miles northeast of Gainesville.

The Savannah, Florida & Western Railroad runs from Gainesville *via* Waycross, to Savannah and Charleston, and has a line from Waycross to Callahan, 56 miles distant. This railroad has therefore two junctional points with the F. C. & P. Railroad, to wit, at Gainesville and Callahan.

This all-rail traffic of the F. C. & P. road, destined for northern points, is delivered by that company to the S. F. & W. road at Callahan.

Traffic from Gainesville might therefore reach Waycross, the junction point of the branches of the Savannah, Florida



& Western Railroad to Gainesville and Callahan, by traversing the line of that road between those points direct, a distance of 154 miles, or it might pass through Lawtey, thence on to Callahan, by the F. C. & P. road, and thence by the S. F. & W. road to Waycross 127 miles. At Gainesville, therefore, the F. C. & P. and the S. F. & W. roads are in competition, while at Lawtey there is only a single railroad.

The present rate from Callahan (issued April 18, 1891), as has been stated, is \$2.01 per crate of 50 pounds to New York, and from Lawtey, which is 32 miles nearer New York, on freight routed by way of Callahan, than is Gainesville, the rate is \$2.51 or about three-fourths of a cent a quart more on berries from Lawtey than from Callahan, while the Gainesville rate is 30 cents less or \$2.21.

The rates for all this territory are made up in the manner common to all the territory within the jurisdiction of the Southern Steamship & Railway Association; that is to say, by making a rate to certain places, which are generally competitive points, and called basing points, and for all other points, generally places where there is no competition, by adding that local from the basing point, which will yield the lowest rate.

This method of making rates has been considered by the Commission in other cases. *In re Tariffs and Classifications*, 3 I. C. C. Rep. 19; 2 Inters. Com. Rep. 461, and *Hamilton & Brown v. The C. R. & C. R. R. Co. et al.*, 4 I. C. C. Rep. 686; 2 Inters. Com. Rep. 482. Those cases point out that the inherent defect in this method of making rates is that the carriers treat traffic intended to be continuous between interstate points as consisting of two kinds of service independent of each other, the one to the basing point on a through rate, and the other from the basing point to the intermediate point, on a local rate.

One ground of defense suggested is, that if the Commission should order the defendants to cease and desist from charging a higher rate from Lawtey than from Gainesville *via* Callahan, it would be of no avail to the Lawtey shippers, because the F. C. & P. road could as well and with as much profit to itself cease shipping from Lawtey *via* Callahan and



ship from that point *via* Gainesville and charge the same rate *via* Gainesville that it now charges *via* Callahan; that it would thereby avoid disobeying the order with no loss to itself or advantage to Lawtey shippers. It is said that the long and short haul section of the statute was not enacted to meet the peculiar situation here existing.

The prohibition of the statute is "greater compensation in the aggregate for the transportation of passengers or of like kinds of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance." The situation is that, notwithstanding the F. C. & P. road might send this traffic from Gainesville to Waycross by another road and without going through Lawtey or Callahan, yet it does in fact send it by the latter route, and thus by its own volition it brings itself within the precise terms of the statute by having thus adopted a route which, as between the points of Lawtey and Gainesville, is in respect of rates within the prohibition of the statute. It must while adhering to the same be subject to the statutory provisions, notwithstanding the road might adopt another route which would make Lawtey at a greater distance than Gainesville from the point of destination of the traffic.

It is also said by the defendant, the F. C. & P. R. R. Company, that this rate, which is on its face a violation of the long and short haul clause of the Act, from Gainesville is "dictated" by the Savannah, Florida & Western Railroad Company, using the word "dictated" in a conventional sense, and meaning that that company having fixed a rate for Gainesville to northern points *via* Waycross, the Peninsular road must meet the rate at that point or go out of the business. This is probably true, but the fact does not excuse the defendants for making the higher rate from Lawtey. The Act to regulate commerce "dictates," in the real sense of that word, that the rate shall not be greater for the shorter haul from Lawtey than for the longer haul from Gainesville. Nor is it irrelevant or immaterial to the question, as claimed by the S., F. & W. Company, for that company participates in

the illegal rate, in so far as it takes the freight on a proportion of the whole rate from Callahan to New York; it concerns that company, as well as the other carriers between those points, for they all unite in making the joint illegal rate.

No other defense is interposed as to the greater rate from Lawtey, and the defendants must be directed to bring the Lawtey rate to a point where it shall not be greater than the rate from Gainesville, or any other point more remote from New York than is Lawtey.

The complainant put in evidence a paper purporting to show shipments from Hammock Ridge during February, March and April, 1890, of 250 crates of berries, and certain other figures appear thereon, as follows: " $250 \times 50 = 12,500 @ 5.00$  6250.00."

The first item is "22 crates R. & P.—N. Y."

The next item is "29 " S. B.—"

All the other items are merely number of crates and ditto marks under "crates," followed by the letters "S. B."

This exhibit cannot be considered of much value.

Complainant fails to show where the shipments were destined and over what lines they were carried. The computation above stated may, and probably does, mean 250 crates of 50 pounds each= $12,500$  pounds, charged for transportation at the rate of \$5.00 per hundred pounds, which amounts to \$625.00; but it is not so stated in the list put in evidence, or otherwise proved. The only testimony in explanation of this paper was that of the complainant as follows:

"I shipped during the season of 1890, 250 crates of berries, as shown by list hereto attached and marked Exhibit No. 3, upon which I claim a rebate of four dollars and twelve cents per hundred pounds, or two dollars and six cents per crate."

Where claim for reparation is made in a complaint of unreasonable rates, the burden of proof is on the complainant to show the facts connected with the claim, particularly dates, quantities, points of shipment and destination, trans-

portation lines, and charges collected; and when in such cases these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant in consequence of charges found unreasonable, it will decline to award reparation. This rule is consistent with the award of damages to injured parties in the Railroad Commission of Florida Case (5 I. C. C. Rep. 13, 136; 3 Inters. Com. Rep. 688), heard at Jacksonville immediately before the hearing of this case, for there the basis of reparation was accurately determinable. But this case furnishes no such guide. The evidence on this point being too vague to enable the Commission to ascertain "what reparation, if any," is due to complainant, it cannot properly make any recommendation in regard thereto.

There is another feature connected with the demand for reparation in this case. Complainant in his brief sets up an additional claim for damages in the following language:

"We have made no effort to show the amount of damages sustained by this extortionate rate compelling producers to allow a large percentage of berries to remain on the vines unharvested, as at best it could only be estimated. That it has been a great damage cannot be denied. We think a precedent should be established for such cases by awarding nominal damages."

The damages thus suggested are purely speculative and not susceptible of legal computation. They are as uncertain and remote as though claimed on the ground that if the transportation rate had been reasonable the complainant would have raised a larger crop, or have purchased and sold at a profit in northern markets the crops of neighboring growers.

The Commission sees no reason why it should in this case deviate from the rule that the measure of reparation due to injured parties from unreasonable rates is the difference between the rate actually charged and the reasonable rate which should have been charged. The request for further reparation made by complainant in his brief, although limited to nominal damages, must therefore be denied.

An order will be made in accordance with the above views.

J. M. RISING, J. L. BROWNLEE, D. Q. COLE, AND OTHERS v. THE SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY, THE CHARLESTON & SAVANNAH RAILWAY COMPANY, THE NORTHEASTERN RAILROAD COMPANY OF SOUTH CAROLINA, THE WILMINGTON, COLUMBIA & AUGUSTA RAILROAD COMPANY, THE WILMINGTON & WELDON RAILROAD COMPANY, THE SEABOARD & ROANOKE RAILROAD COMPANY, THE PETERSBURG RAILROAD COMPANY, THE RICHMOND & PETERSBURG RAILROAD COMPANY, THE RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY, THE ALEXANDRIA & FREDERICKSBURG RAILWAY COMPANY, THE ALEXANDRIA & WASHINGTON RAILWAY COMPANY, THE BALTIMORE & POTOMAC RAILROAD COMPANY, THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY, AND THE PENNSYLVANIA RAILROAD COMPANY.

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Complaint filed January 21, 1891.—Answers filed February 13-25, 1891.—Heard at Jacksonville, Fla., March 31 to April 1, 1891.—Briefs filed August 8 to September 28, 1891.—Decided January 28, 1892.

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*Thomas E. Bugg*, for complainants.

*R. G. Erwin* and *John E. Hartridge*, for the Savannah, Florida & Western R'y Co. and the Charleston & Savannah R'y Co.

*W. G. Elliott*, for the Northeastern R. R. Co. of S. C., the Wilmington, Columbia & Augusta R. R. Co., the Wilmington & Weldon R. R. Co., the Petersburg R. R. Co. and the Richmond & Petersburg R. R. Co.

*James A. Logan*, for the Washington Southern R'y Co., Successor to the Alex. & Fred. R'y Co. and Alexandria & Washington R'y Co., the Baltimore & Potomac R. R. Co., the Philadelphia, Wilmington & Baltimore R. R. Co., and the Pennsylvania R. R. Co.

*Legh R. Watts*, for the Seaboard & Roanoke R. R. Co.

MEMORANDUM.

BY THE COMMISSION :

The sole question presented for determination in this case is the reasonableness of rates charged by the defendants for the transportation of strawberries from Callahan, Fla., to New York City and other northern markets. This question, so far as it relates to the rate to New York City, is decided in the foregoing report and opinion of the Commission in the case of Charles P. Perry against The Florida Central & Peninsular Railroad Company and others. The two cases were brought at about the same time against the same carriers, with one exception, and were also heard simultaneously, with the understanding that the testimony would be considered in each case as far as applicable. It follows that the facts found and conclusions stated by the Commission in regard to the rate on strawberries from Callahan to New York in its decision of the above-mentioned case of Perry must necessarily be the findings of fact and conclusions of the Commission on that point in this case. In regard to defendant's rates on berries from Callahan to the other northern points, it seems unnecessary to make any other ruling than to direct that they must be lawfully adjusted to the reasonable rate which defendants will, upon the findings of fact and conclusions of the Commission herein, be required to put into effect for the transportation of berries from Callahan to the city of New York.

Order will be entered accordingly.

## No. 293.

**MURPHY, WASEY & CO. v. THE WABASH RAILROAD COMPANY, THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, THE DETROIT, GRAND HAVEN & MILWAUKEE RAILROAD COMPANY, THE CHICAGO & GRAND TRUNK RAILROAD COMPANY, THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, THE CHICAGO, BURLINGTON & KANSAS CITY RAILWAY COMPANY, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY.**

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Complaint filed March 27, 1891.—Answers filed from April 16 to May 22, 1891.—Heard June 25, 1891.—Proposed findings for complainants and briefs filed July 2–16, 1891.—Decided January 30, 1892.

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1. The power and duty of the Commission to fix maximum rates in cases of complaints against rates as unjust, excessive and unreasonable, re-affirmed.
2. A carrier should receive a greater compensation in the aggregate for hauling a carload of large tonnage than one of less tonnage, but other things being equal, as a general rule, the rate per cwt. should be less in the former than in the latter case.
3. A rate prescribed for complainants' shipments in mixed carloads of chair-stuff, spring bed and mattress material all wooden, minimum weight 25,000 lbs., of not exceeding 20 cts. per hundred pounds from Chicago to Omaha and not exceeding 15 cts. per hundred pounds from Mississippi River points to Omaha, resulting in a through rate from Detroit to Omaha *via* Chicago of 30 cts. per hundred pounds and *via* Mississippi River points, not through Chicago, of 31½ cts. per hundred pounds.

*Geo. E. Wasey*, for complainants.

*W. H. Blodgett*, for Wab. R. R. Co.

*J. W. Blythe*, for C. B. & Q. R. R. Co. and C. B. & K. C. R'y Co.

*E. W. Meddaugh*, for D. G. H. & M. R'y Co. and C. & G. T. R'y Co.

*J. W. Cary*, for C. M. & St. P. R'y Co.

*T. S. Wright*, for C. R. I. & P. R'y Co.

REPORT AND OPINION OF THE COMMISSION.

*VEAZEY, Commissioner:*

The complainants, Murphy, Wasey & Co., are a corporation created under the laws of Michigan and are engaged in the manufacture and sale of chairs, woven wire mattresses and spring beds, having factories for the manufacture of those articles and conducting said business at Detroit, Michigan, and Omaha, Nebraska. The defendants are common carriers by rail engaged in interstate transportation and subject to the provisions of the "Act to regulate commerce." By order of this Commission copies of the complaint in this case were furnished and leave to intervene granted to the following companies, it appearing that they have an interest in the question raised, to wit: The Burlington, Cedar Rapids & Northern Railway Company; the Chicago, Burlington & Northern Railroad Company; the Chicago, Burlington & Kansas City Railway Company; the Chicago, Iowa & Dakota Railway Company; the Chicago, Milwaukee & St. Paul Railway Company; the Chicago & Northwestern Railway Company; the Chicago, Rock Island & Pacific Railway Company; the Chicago, St. Paul & Kansas City Railway Company; the Illinois Central Railroad Company; the Iowa Central Railway Company, and the Wisconsin Central Company. Leave to intervene was also given to "any other common carrier upon whose line shipments of freight are carried under 'The Western Classification,'" and a copy of the complaint was sent to the Chairman of the Western Classification Committee.

It appears that complainants manufacture at and sell from Detroit chairs, woven wire mattresses and spring beds, and also partially manufacture said articles at that point and ship them in an unfinished condition to Omaha where they are finished and sent to market. They allege that "for the purpose of *conveniently* carrying on their business at Omaha it is necessary to make shipments from Detroit to Omaha of chair stock partially manufactured, and chair, spring bed and

frame material in *mixed* carloads." Shipments from Detroit to Omaha are subject, until Chicago and Mississippi River points are reached, to the "Official Classification" and from thence on to the "Western Classification." No complaint is made as to the rates exacted of complainants under the "Official Classification," but it is charged that the rates under the "Western Classification" from Chicago and Mississippi River points on to Omaha are unjust and unreasonable and in violation of the "Act to regulate commerce." It is also alleged that the "Western Classification" makes no provision for *mixed* carload shipments of freight such as that of complainants and that in said classification there is no distinction "between chairs completely manufactured and finished ready for use and chair stock like that of complainants partially manufactured and unfinished."

The prayer of the complaint is that this Commission make an order providing for "mixed carload shipments of chairs partially manufactured, and chair, mattress frame and spring bed material or stuff, minimum weight 25,000 lbs.," and fixing a reasonable and just rate for the transportation of such carloads. They claim that a rate "not exceeding 10 cts. per hundred weight from Detroit to Chicago, and not exceeding 15 cts. per hundred weight from Chicago to Omaha, or a through rate of 25 cts., would be just and reasonable."

Answers have been filed by all the companies originally made parties defendant and also by the Chicago, Burlington & Kansas City Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Milwaukee & St. Paul Railway Company.

Of these seven respondents the four following neither admit nor deny the allegations of the complaint, but call for proof thereof, to wit: The Detroit, Grand Haven & Milwaukee Railway Company, the Chicago & Grand Trunk Railway Company, the Chicago, Burlington & Kansas City Railway Company, and the Chicago, Burlington & Quincy Railroad Company. The first two of these roads, the Detroit, Grand Haven & Milwaukee and the Chicago & Grand Trunk Railway Companies are the roads over which complainants make the bulk of their shipments from Detroit as far as Chicago;



their rates are made under the "Official Classification," and they set forth in their answer, that they "have no interest" in the question raised by the claim of complainants that a rate of 10 cts. per hundred weight from Detroit to Chicago would be reasonable, "for the reason that a ruling" to that effect "will not affect the rates charged and maintained by them."

The Chicago, Milwaukee & St. Paul Railway Company and the Chicago, Rock Island & Pacific Railway Company deny the allegation that the rates complained of are unjust and unreasonable. It is admitted by the former that the "Western Classification" does not "discriminate between chairs completely manufactured and finished for use and chair stock such as complainants ship to Omaha," but it claims that there is no injustice in this because the "so-called chair stock partly manufactured and unfinished which complainants ship to Omaha, is in fact chairs substantially finished except that they are not painted." It is further set up by said respondents in substance, that it would be in disregard of the principles upon which classification is based and an unjust discrimination against others who ship in less than carloads any one of the articles composing complainants' shipments, to permit such shipments of mixed carloads at the rate asked for by complainants.

The Wabash Railroad Company, while neither denying nor admitting the allegations of the complaint, questions the power of this Commission under the "Act to regulate commerce," to make or enforce an order classifying freight or fixing the rates for its transportation.

No argument was made at the hearing or subsequently submitted in support of this position. Section 1 of the Act to regulate commerce provides that interstate transportation charges shall be just and reasonable and prohibits and declares to be unlawful every unjust and unreasonable charge. Section 12 authorizes and requires this Commission to enforce the provisions of the Act. The question of our duty and power under the Act to determine what are reasonable rates was fully considered in the case of *Coxe Bros. & Co. v. Lehigh Valley R. R. Co.*, 4 I. C. C. Rep. 577, 578; 3

Inters. Com. Rep. 460, in which it was held that "the Act to regulate commerce, which declares every unjust and unreasonable charge to be unlawful and requires its provisions to be enforced by the Commission, confers the power to determine, and imposes on the Commission the duty of determining, what are the reasonable rates which the charges may not exceed, as well as what are unreasonable." In respect to classification it is also said in same case, pp. 559, 560, "the arrangement of freight into classes is deemed by the roads an essential part of rate-making and it is so treated by the 'Act to regulate commerce,' which requires that the schedule of charges which every common carrier must keep open to the public 'shall contain the *classification* in force.' . . . Classification may be used as a device to effect unjust discrimination or as a means of violating the most essential provisions of the statute. When so used it is the duty of the Commission to so revise such arrangement as to correct the abuse." (See also, *Perry v. F. C. & P. Railroad Co. et al.*, recently decided, on question of right of Commission to establish maximum rate when the complaint charges excessive, unjust and unreasonable rate). While classification is intended to furnish a basis for rate charges, it is clear that an incorrect classification would neither authorize an unjust rate nor render unlawful a just rate. The ultimate and controlling question in the present and all such cases is as to the reasonableness of the rate complained of.

#### FACTS AND CONCLUSIONS.

The mixed shipments made by complainants consist of chair stock or material, bed rails, head and foot pieces, slats, wire for woven-wire mattresses and for springs on spring-beds, and plates, slides, bolts, nuts and screws for putting the materials together. The following is the schedule of rates in effect June 25, 1891, from Chicago to Omaha on said articles in carloads:

Chair stuff. . . . .	30	cts. per cwt.
Mattress frame material. . . . .	20	cts.     "

Bed slats.....	17½ cts. per cwt.
Wire .....	25 cts. “
Castings, boxed.....	25 cts. “
Nuts and bolts.....	25 cts. “
Screws, boxed.....	60 cts. “

The complainants originally asked for a rate of 15 cents per hundred pounds on these articles in *mixed* carloads. At the hearing the complainants were represented by Mr. Wasey, one of their number, and in his argument in their behalf he stated, in substance, that the items of wire, plates, slides, nuts, screws and bolts were so immaterial to them as part of their shipments, that “if this Commission did not want to make a rate embracing them,” he would strike them out. He further said: “The thing we are after is to ship chair stuff *as we make it*, spring bed and mattress material *as we make it*, in mixed carloads from Chicago to Omaha.” Being asked by a member of this Commission, “Does that include anything but *wood*?” he replied, “Nothing but wood.” The elimination of everything except the wooden materials as prepared by complainants from the mixed carloads for which they ask said rate will very much simplify the question, and as it is stated by their representative to be a virtually immaterial matter to complainants, we will confine ourselves to a consideration of what is a reasonable and just rate from Chicago and Mississippi River points to Omaha on mixed carloads of chair stuff, spring bed and mattress material, including bed slats—all wooden—as prepared by complainants at Detroit for shipment to Omaha.

The chair material shipped by complainants from Detroit to Omaha consists of the legs, arms, rounds and backs sawed and turned to shape, mortised and bored, and cane for seats and backs. At Omaha the seats and backs are caned, the parts are put together, and a finish of varnish and paint is applied. The spring bed and mattress material consists of side rails, end pieces and slats. These are all sawed to shape and planed. There are holes bored in the bed rails for putting them together, and nothing remains to be done to them

at Omaha except oiling. The bed slats are bored at Omaha to fit them for receiving the ends of the springs. The evidence for the complainants is to the effect that the labor bestowed on these materials at Omaha, and money paid out for it, are double what they are at Detroit.

The value of the material for complainants' rockers at Detroit, as shipped by them to Omaha, is \$7.00 per dozen, and when completed these chairs are valued at Detroit at \$28.00 per dozen, and at Omaha at \$30.00 per dozen. The value of the material for a dozen of complainants' common chairs at Detroit is \$1.80, and when completed they are valued at Detroit at \$6.25 per dozen, and at Omaha at \$7.00 per dozen. The material for a mattress frame is valued at 45 cts. a set, and the completed bed at from \$1.30 to \$2.10. The bulk of complainants' stock consists of the "cheap grade chairs," worth about \$10.00 per dozen; and, taking all kinds together, the average selling price of their chairs is stated to be less than \$10.00 per dozen. The cost of the completed rocker is estimated to be from \$18.00 to \$22.00 per dozen, which deducted from their value as stated above leaves a profit of from \$8.00 to \$10.00 per dozen. The profit is much less on the common chair, which constitutes the bulk of their shipments, and, also, on the spring bed and mattress material.

There can be loaded in a car about 7,000 lbs. of finished rockers and common chairs, and about 30,000 lbs. of the material for such rockers and chairs, and a carload of mixed shipments of complainants' materials of all kinds as shipped to Omaha weighs from 25,000 lbs. to 30,000 lbs.

In estimating for the purpose of adjusting rates, the comparative values of a carload of finished rockers and a carload of material for those rockers on shipments from Detroit to Omaha, counsel for defendants takes as the basis for such estimate the increased values of such carloads after their arrival at Omaha. The proper basis, however, would seem to be their value at Detroit when shipped. As stated by counsel for defendants, a car will carry 31 dozen finished rockers and 125 dozen material for such rockers. At \$28.00 per dozen their value at Detroit, a carload of finished rockers

will be worth \$868.00; a carload of material for such rockers 125 dozen, at \$7.00 per dozen, their value at Detroit, will be worth about \$875.00. The evidence does not furnish any reliable data indicating, and it would seem to be impracticable to indicate in advance, the proportion which any particular carload shipment will contain of the several articles shipped by complainants. These articles differ widely in value, and in the absence of such data it is impossible to estimate the average value of a carload of complainants' mixed shipments of material and also of a mixed carload of articles completed from such material and shipped in the same proportion.

The value per hundred pounds of the finished articles is, however, many times greater than that of the unfinished material.

A carload of finished rockers weighs, as above stated, 7,000 lbs., and shipped at the 4th class rate applicable to it of 30 cts. per cwt., minimum weight 12,000 lbs., will pay \$36. The material for such rockers shipped at the 30 cts. rate, minimum 25,000 lbs., now charged, yields \$75.00 per car. It thus appears that while as before shown the value of a carload of rocker material at Detroit differs but little (\$7.00) from that of a carload of finished goods, the earnings of the carriers are more than twice as large per car on the former as on the latter. The rate per hundred pounds is in both cases the same, 30 cts., and the difference in earnings results from the difference in minimum carloads allowed and which can be transported. The carrier, it is true, should receive a greater compensation in the *aggregate* for hauling a large than a small carload, but, other things being equal, as a general rule the rate per cwt. should be less in the former than in the latter case. This is recognized in the various systems of classification in force in which a large number of commodities are given a higher or lower class according to the minimum carload allowed. The amount of tonnage of an article which can be hauled per car, and the consequent greater or less aggregate revenue therefrom to the carrier, are matters of importance in fixing the rates per hundred weight on a carload of such articles. It not appearing that there is a

material difference in the values of the two carloads, it would seem to be a correct conclusion, in this case, that if thirty cents per hundred weight is a reasonable charge on carloads of finished rockers of the actual weight of 7,000 lbs. (minimum weight allowed, 12,000 lbs.), then a less rate than that should be charged on carloads of material for such rockers of the actual weight of 30,000 lbs. (minimum allowed, 25,000 lbs.).

The minimum weight, 25,000 lbs., which complainants ask to be allowed on their shipments, is also, greater than that on "furniture stock, in the rough, sawed to shape, not further finished," "mattress frame material," and "bed slats," in carloads of which the minimum allowed is 20,000 lbs.

The classification and rate asked for by complainants differs not only from those in force on the above-named articles but also from those on nearly all that are covered by the Western Classification, in that the minimum carload weight asked for on complainants' shipments is much greater. It is probable that this was the basis of the opinion (hereinafter set forth) expressed by the freight agent of the Chicago, Burlington & Quincy Railroad Company, that the rate requested by complainants will "pay the railroads a greater revenue than the general classification and tariff on furniture of any kind or description."

Of the wooden material shipped by complainants, shipments in carloads of their *chair stock* alone is not provided for in the Western Classification. Their mattress frame material has a class "C" rate from Chicago to Omaha of 20 cents per cwt., and their bed slats a class "D" rate of 17½ cents. For a while they made their mixed shipments under the class "B" rate of 25 cts. per cwt. from Chicago to Omaha under the item in the Western Classification of "Furniture stock in the rough, sawed to shape, but not otherwise completed," but the Inspection Bureau of the Western Traffic Association having decided that complainants' shipments were not covered by that item, they have since been charged the class "4" rate of 30 cts. per cwt. from Chicago to Omaha, which is the rate on finished chairs. No discrimination is made in the Western Classification between carloads of finished chairs

and chair stock such as complainants', and it does not provide for mixed carload shipments of chair stock and spring-bed and mattress material. From Detroit as far as Chicago, complainants receive on their mixed carloads the 6th class rate under the Official Classification of 10 cents per hundred pounds.

After the completion of their factory at Omaha, the complainants, in October, 1889, sent an application to the chairman of the Western Freight Association for a special commodity rate on their mixed carloads, in which they say: "What we desire is a special commodity rate on mixed carloads of *chair stock in the rough* and spring bed stock consisting of *rails and slats*, minimum weight 25,000 lbs., class D rate." This application was approved by the freight agent of the Chicago & Northwestern Railroad Company, and also by the freight agent of the Chicago, Burlington & Quincy Railroad Company, the latter stating "that the rate which is requested pays the railroads a greater revenue than the general classification and tariff on furniture of any kind or description."

The same application being subsequently several times renewed was approved and pronounced reasonable by the traffic manager of the Wabash Railroad Company, the general freight agents of the Chicago, Burlington & Quincy Railroad Company and the Chicago, St. Paul & Kansas City Railway Company. The general freight agent of the Chicago, Rock Island & Pacific Railway Company and freight traffic manager of the Chicago, Milwaukee & St. Paul Railway Company, as representatives of the Western Freight Association on the Uniform Classification Committee, joined in a report recommending a difference of classes between finished chairs and chair stuff as shipped by complainants and placing their chair stock and bed stuff on the same basis. The several applications of complainants were not granted and the report of the Classification Committee was not agreed to by the Trunk Line Association. It will be noted that the language above quoted as used by complainants in their application only covers *wooden* material and that the chair stock is described as being "*in the rough*." The appro-



val of the application by the several railroad officials above mentioned was limited to shipments of this kind. Complainants' chair stock is sawed, turned to shape, planed, mortised and bored, ready to put together.

According to the evidence the complainants appear to be practically the only parties who manufacture and ship over the *defendant roads* the combination of goods for which they ask a rate in mixed carloads. Their shipments for about a year and a half after opening their business at Omaha amounted to about 100 carloads, but they say they expect them to increase and become from 200 to 300 carloads per annum. They state that they have heretofore made the bulk of their shipments to Omaha by two routes; one *via* the Wabash Railway Company through from Detroit to Omaha, and the other *via* the Detroit, Grand Haven & Milwaukee Railway Company and the Chicago & Grand Trunk Railway Company, from Detroit to Chicago, and the Chicago, Burlington & Quincy Railway Company, from Chicago to Omaha. On the route *via* the Wabash Railway Company's line, the rate to Mississippi River points is governed by the Official Classification and from the Mississippi on to Omaha by the Western Classification. The Western Classification rates from Mississippi River points to Omaha are as follows:

1	2	3	4	5	A	B	C	D	E
<u>55,</u>	<u>40,</u>	<u>32,</u>	<u>25,</u>	<u>20,</u>	<u>22½,</u>	<u>17½,</u>	<u>15,</u>	<u>12½,</u>	<u>11.</u>

From Chicago to Omaha, they are:

1	2	3	4	5	A	B	C	D	E
<u>75,</u>	<u>60,</u>	<u>42,</u>	<u>30,</u>	<u>25,</u>	<u>30,</u>	<u>25,</u>	<u>20,</u>	<u>17½,</u>	<u>16.</u>

The rates now charged complainants from the Mississippi to Omaha is the 4th class rate of 25 cts. per cwt. The distance to Omaha from Hannibal, Mo., the point at which the Wabash road crosses the Mississippi, is 334 miles, and the rate per ton per mile is about 1 cent, 5 mills. The distance by the shortest line from Detroit to Chicago is 269 miles, and from Chicago to Omaha 490 miles, and the rate per ton per



mile from Detroit to Chicago is a fraction over 7 mills, and from Chicago to Omaha a fraction over 1 cent, 2 mills.

It will be noted that while the distance from Chicago to Omaha is not twice as great as that from Detroit to Chicago, the rate of 30 cents per cwt. on complainants' shipments between the former points is three times as great as that of 10 cents per cwt. between the latter, and notwithstanding the greater mileage, the rate per ton per mile from Chicago to Omaha is almost double that from Detroit to Chicago. As a general rule, in the absence of materially dissimilar conditions, the rate per ton per mile is less for a longer than a shorter haul.

The rates under the Official Classification from Detroit to Chicago and from Detroit to the Mississippi not being in question, the roads directly interested in the rates asked for are the Wabash Railroad Company and the Chicago, Burlington & Quincy Railroad Company—the former being the road over which complainants' shipments are carried from the Mississippi River to Omaha, and the latter being the road over which such shipments are made from Chicago to Omaha. According to reports filed by those railway companies with this Commission, the average receipts per ton per mile and estimated cost of carrying a ton a mile on said roads were for the period stated as follows:

Name of road.	For year ending June 30, 1890.	
	Average receipts per ton per mile.	Estimated cost of carrying a ton one mile.
Chicago, Burlington & Quincy Road.....	.986 cts.	.566 cts.
	From Aug. 1, 1889, to June 30, 1890.	
Wabash Railroad Company..	.647 cts.	.494 cts.

From this it appears that the rate per ton per mile, 1 cent, 2 mills, from Chicago to Omaha, now in force on complainants' shipments, over the Chicago, Burlington & Quincy road, is more than double the estimated cost of carrying a ton of freight in general a mile, over that road, during the time stated, and over 2 mills more than its average receipts per ton per mile; and the rate per ton per mile, 1 cent, 5

mills, now in force on complainants' shipments on the Wabash road from Mississippi River points to Omaha is three times the estimated cost of carrying a ton of freight in general a mile over that road for the period named and over double its average receipts per ton per mile.

There was no proof made as to the actual cost of transporting complainants' shipments. There appears to be nothing in the nature of those shipments or in the circumstances and conditions attending their transportation which calls for a higher than the average rate on shipments in general.

Complainants' chair stuff, while probably not strictly speaking "in the rough," differs materially from finished chairs in value and in that work remains to be done on it. It seems clear that it should receive a lower rate than that now charged and which is the rate on finished chairs in carloads of minimum weight of 12,000 lbs. In view of all the facts to which we have adverted and particularly of the large minimum weight to be allowed and the larger actual weight per car of complainants' shipments, our conclusion is that they should have a rate not higher than the class "C" rate of 20 cts. per hundred pounds from Chicago to Omaha and 15 cts. per hundred pounds from Mississippi River points to Omaha. This does not operate to lower present carload rates on wooden mattress and spring bed material. The shipments taking this rate are to embrace chairs partially manufactured and wooden material to complete the same and wooden mattress and spring bed material, with minimum weight of carload 25,000 lbs. These rates will yield a rate per ton per mile of nearly 9 mills, and on the minimum carload from Chicago to Omaha \$50, and on a carload of actual weight of 30,000 lbs., \$60. This, although the mileage is greater, is a larger rate per ton per mile than that under the Official Classification from Detroit to Chicago and to Mississippi River points. But in arriving at our conclusion as to the maximum rates to be allowed in this case, we have thought it proper to take into consideration the fact that the rates for corresponding classes are somewhat higher under the Western than the Official Classification and that this

appears to be justified in part, at least, because of the greater tonnage which is transported over the territory subject to the Official Classification than is carried over that subject to the Western Classification.

It is accordingly ordered, that the defendants interested therein forthwith cease and desist from charging and collecting higher rates than those above indicated on mixed carloads of chairs partially manufactured and wooden material to complete the same and wooden mattress and spring bed material, minimum weight 25,000 lbs., for the transportation thereof from Chicago and Mississippi River points to Omaha.

As the rates from Detroit to Chicago and Mississippi River points are respectively, 10 cts. and  $16\frac{1}{2}$  cts. per cwt., the rates prescribed herein will result in a through rate from Detroit *via* Chicago to Omaha of 30 cts. per cwt. and *via* Mississippi River points, but not through Chicago, of  $31\frac{1}{2}$  cts. The distance *via* Chicago is 759 miles, and *via* Mississippi River points, 797 miles.

THE RAILROAD COMMISSION OF FLORIDA v. THE  
SAVANNAH, FLORIDA & WESTERN RAILWAY  
COMPANY, ET AL.

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APPLICATION FOR RE-HEARING.

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Originally decided October 29, 1891.—Application for re-hearing filed December 22, 1891.—Hearing on application January 19, 1892.—Application denied February 9, 1892.

*R. G. Erwin, John E. Hartridge, W. G. Elliott, James A. Logan and Lawton & Cunningham* for defendants, in support of application.

*C. M. Cooper*, for complainant, in opposition thereto.

MEMORANDUM.

BY THE COMMISSION:

The report and opinion of the Commission in this proceeding was rendered on the 29th day of October, 1891. (See 3 Inters. Com. Rep. 688). An order was thereupon duly entered and served upon the defendants, requiring them to forthwith cease and desist from charging or receiving any greater compensation in the aggregate for the transportation, wholly by railroad or partly by railroad and partly by water, of oranges and lemons shipped from Jacksonville, Callahan, Gainesville, Lake City, Live Oak or Fernandina, in the State of Florida, called and known as base points, or from other points of shipment in said State, to Baltimore, Philadelphia, New York or other northeastern cities, than an addition of five cents per box to the rates in force for such transportation immediately prior to November 23, 1890. The defendants were also required to make reparation by refunding to the several persons entitled thereto, within sixty days after demand therefor, all sums received by them subsequent to that date, for the transportation of oranges and lemons as

aforesaid, in excess of such addition of five cents per box to the rates in force prior thereto; and, as such persons were not parties to the proceeding, and the amounts due to them respectively could not be ascertained from the evidence on file, the case was continued for such further action or inquiry in that behalf as might be necessary.

On December 22, 1891, certain of the defendants, to wit: The Savannah, Florida & Western Railway Company, the Charleston & Savannah Railway Company, the Northeastern Railroad Company of South Carolina, the Wilmington, Columbia & Augusta Railroad Company, the Wilmington & Weldon Railroad Company, the Petersburg Railroad Company, the Richmond & Petersburg Railroad Company, the Richmond, Fredericksburg & Potomac Railroad Company, the Alexandria & Fredericksburg Railroad Company, the Alexandria & Washington Railway Company, the Baltimore & Potomac Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company, the Pennsylvania Railroad Company, and the Ocean Steamship Company of Savannah—filed an application for a rehearing of the case; and the Commission thereupon ordered that such application be heard on the 19th day of January, 1892. Provision was made in the order for the service and filing of the affidavits, documents or other papers to be used by the petitioners on the hearing, and also denying oral argument except by consent of complainant's counsel. Such consent having been refused, the application was submitted upon the affidavits filed by the parties and the briefs of counsel.

The only affidavit filed by complainant is that of A. M. Ives, Manager of the Florida Fruit Exchange, which, however, does not go to the merits of the motion, but shows that the defendants have failed to comply with the order of the Commission; that the Florida Fruit Exchange has filed a petition in the United States Circuit Court for the Northern District of Florida to enjoin the Savannah, Florida & Western Railway Company and the Ocean Steamship Company from charging and collecting rates in excess of those allowed by the Commission; that said defendants announced to the court their intention to apply for a rehearing, and that the

sitting judge refused to proceed further in the matter until such intended application was disposed of.

In general terms the request for a rehearing is based upon alleged errors in the findings of fact embraced in the original report, and unwarranted conclusions claimed to result from such mistakes. The petition and affidavits also set forth the nature and bearing of the evidence desired to be introduced upon a new trial, and assert that such further and additional proof would justify, if not require a different decision.

We have carefully considered the matters set forth in these moving papers, and the argument which they are assumed to support, without being convinced that the complaint of the petitioners is well founded, or discovering any substantial reason for granting the application. The discrepancies alleged to exist between the facts originally found and those now proposed to be shown do not, in our judgment, sustain any controlling relation to the results already announced, and are quite insufficient to warrant a reopening of the case.

It seems to us, on the contrary, that the correcting statements and fuller information, which the defendants now seek to present, might all be admitted and the record amended accordingly, without material effect upon the real question at issue. The mistakes claimed to have been made are confined to minor and incidental statements, upon which the important findings are in no way dependent, while the additional facts relied upon, conceding they could all be established, are without special significance or conclusive bearing upon the main contention.

These impressions are confirmed by an analysis of the affidavits and a more detailed examination of their various allegations. There appear to be nine specifications of error, and these will be separately noticed.

In the first place it is claimed that testimony can be introduced showing that the average market price of oranges during the seasons of 1889-90 and 1890-91, after deducting transportation charges and commissions, considerably exceeded \$1.52 per box, and that the average profit to the grower considerably exceeded 72 cents, exclusive of interest

on investment and other charges not included in the fifth finding of the Commission. Four affidavits on this point are presented, viz: J. H. Killough, a New York commission merchant, says the average price per box, during the 1890-91 season, was at least \$2.25 per box. H. H. Schutte, of the same place, business not described, says it was \$2.25 to \$2.75 for 1889-90; \$2.00 to \$3.25 for 1890-91; and has been \$2.00 to \$3.00 so far this season. E. M. Travis, of the same place, business not described, says it would average about \$2.50 per box for the season 1890-91; and A. F. Young, of the same place, business not described, says that the average for 1888-89 was \$2.14, for 1889-90, \$2.45; for 1890-91, \$2.72.

The only reference in the report to the market price of oranges is contained in the fifth finding. It is there distinctly stated that "the evidence as to the market value of oranges is very indefinite and unsatisfactory. The average price during the season of 1889-90, as *stated by the manager of the Florida Fruit Exchange*, was \$1.52 per box, after deducting transportation charges and commissions." It was also stated that to net such a sum the selling price must be *about* \$2.00. That this statement was intended to be only approximate is obvious upon its face. It does not, however, appear to be seriously incorrect. If we take the average price per box during 1889-90, named in the affidavits of Schutte and Young, which is about \$2.50, and deduct therefrom 8 per cent. commissions, amounting to 20 cents, and 53 cents freight from Florida base points by the all-rail line, there is left \$1.77, from which must be further deducted the freight charges from points of origin to the Florida base point. Such a computation, on defendants own showing, gives a result not materially different from the approximate sum named in the finding, and stated therein to be the testimony of one witness, the manager of the Fruit Exchange. Using in the calculation the rate from the base point *via* the steamship lines, would make the balance 13 cents greater, but against this it is to be considered that the New York prices stated in these *ex parte* affidavits might be considerably reduced by a closer inquiry and the cross examination of witnesses. It is also to be observed that the

New York market only is given, while a large portion of the traffic went to other northeastern points.

The average of the prices named for the season 1890-91, is about \$2.50 per box. The price of oranges in the New York market during that season is not included in the finding of the Commission, but it appears by these affidavits to have been about the same as the preceding season.

Connected with this statement of prices, which may be presumed to be quite as favorable to the defendants as can be made, is the payment of various loss and damage claims by some of the lines, which is apparently relied upon as evidence of market values during the years mentioned.

For the season of 1889-90, it appears by the affidavit of J. C. Bruyn, Claim Agent of the Savannah, Florida & Western Railway Company, that several claims were paid by that company for oranges lost or destroyed on its line of railway, or for which it was wholly responsible. The names of consignees, number of boxes, amounts paid, destinations, and dates of leaving Florida basing points, are given. The number of these claims are 71. The number of boxes, counting barrels as two boxes, is 119½, of which the greatest number belonging to any one shipment was five boxes, and the least one-half a box. The total amount paid was \$316.40, making the average price per box \$2.65. Of these 119½ boxes, 45½ were consigned to western, northwestern and southern destinations, and to Canada, leaving only 74 boxes for northeastern points, on which \$195.82 was paid, or an average of \$2.65 per box. Prices paid on shipments apparently of the same day and to the same place show considerable variation.

The Ocean Steamship Company shows the payment, for 1889-90, of 51 claims on 58¾ boxes, amounting to \$168.15, an average of \$2.85 per box. The Clyde line paid for the same season 55 claims on 93 boxes, amounting to \$293.05, or \$3.15 per box. Comparison of the prices paid on the same date shows marked differences in value. For instance, the Clyde line paid \$3.50 per box and the Ocean line \$2.50, on December 19, 1889, while the Savannah, Florida & Western paid about \$3.00 on a consignment of that date. The claims paid for the following season make a similar showing,



and need not be given in detail. Much of this wide margin between highest and lowest prices is doubtless accounted for by differences in the quality of the fruit, but no small portion of it represents fluctuations in the market and variations in estimated values at different places and by different persons. The carriers were obliged to depend largely upon the representations of the various claimants whose property was lost or injured, and it is proper to take into account that the oranges paid for, under claims for loss or damage, never reached their destination. The dealers' prices, confined to one market, differ widely, and the damage-claim prices, not wholly representing actual selling prices, also differ widely. Such variations in *ex parte* statements, intended to support an allegation of error, greatly diminish their force, especially when the finding challenged is not absolute and the evidence relating to it is stated to be indefinite and unsatisfactory. But, granting to these estimates of value all the weight of consistent and established facts, we are still unable to find in them any adequate ground for modifying our decision. Whatever undervaluation may have been placed upon this commodity was altogether too slight to influence the vital conclusion. Not only did the petitioners neglect their opportunity to controvert the complainants' evidence upon this point, when, for aught that appears, the proof was readily obtainable, but the actual values now insisted upon are not so different from those assumed in the finding as to indicate error in the results arrived at. Undeniably the market price of an article bears a material relation to the proper charges for its transportation, but it is by no means the only circumstance to be taken into account. It is an important, but not a controlling element in fixing the reasonable rate. It is not the precise, but the approximate value which serves the purposes of tariff making; maximum prices and market fluctuations are of little moment. Exactness in details is desirable, but cannot be essential. Minor inaccuracies, not amounting to gross and radical error, are quite insufficient to impeach the substantial correctness of findings based on numerous and diverse considerations, or require the alteration of rulings to which they relate. The market price of oranges may have been some-

what greater than the figures stated in our report, but the difference is neither important nor misleading.

Similar observations apply with equal force to the claim advanced that the profits realized by growers exceed the estimate contained in the report. The question of profits is involved in the question of prices, and requires no independent comment.

It is alleged in the second place that the Commission erred in referring to a cotton tariff, which took effect September 12, 1891, some months subsequent to the hearing, and in comparing the same with the orange rate in question, because, among other reasons, the defendants had no opportunity to explain the circumstances under which that tariff was adopted. The allusion to this recent cotton rate was in connection with a former and higher tariff on that article, which was put in force October 3, 1889, and was, therefore, a legitimate subject of comparison. By way of argument and illustration the rates and values of cotton and oranges were contrasted in the sixth finding. The use of the older tariff for this purpose is not objected to, and it is impossible to see how mere reference to the fact that a later schedule materially reduced the rate on cotton could prejudice the defendants. It was stated in the same connection, and not here charged to be error, that the gross value of a ton of oranges at \$2.00 per box, was \$50.00, and of a ton of cotton from \$180.00 to \$200.00; while the rates on cotton under the former tariff were not quite double those on oranges, and by the latter tariff exceeded the 40-cent orange rate only about 20 per cent. This change in the cotton rate was not stated nor could it be understood to be the essential fact considered; and the elimination of the tariff objected to would not weaken the use of the prior schedule for purposes of comparison, or materially impair the accuracy of the finding. The lowest value of a ton of cotton, \$180.00, compared with \$50.00, or even \$60.00 for a ton of oranges, with rates on the latter nearly double those on an article worth three times as much, might well be thought significant; the circumstance that a lower cotton rate is now in force could not be deemed

important. That no substantial error was committed by this incidental reference to a tariff not strictly in evidence is too plain for serious discussion.

It should perhaps be mentioned that the affidavit of Mr. Sorrel shows that he referred, in his testimony at the hearing, to compressed cotton, which did not clearly appear from the minutes. The present statement is doubtless in accordance with the fact, but the removal of this uncertainty adds nothing to the case except the correction of a mere detail.

The third allegation is that the Commission erred, in the seventh finding, by stating that: "As to the lines from Florida points of the Savannah, Florida & Western Railway and Ocean Steamship Company, cars carrying oranges north *generally* return loaded." This language was used immediately after the following sentence: "The freight coming south *via* Portsmouth and Norfolk and *via* the all-rail line is comparatively small, but more or less comes by the Ocean Steamship Company *via* Savannah." Defendants claim to be able to show that in fact *more than half* of such cars return empty. With reference to the lines other than the rail and water lines through Savannah, the Commission stated that "most other orange cars return south empty."

The finding actually made appears to us as favorable to the defendants as the evidence warranted; and if in fact more than half of the returning orange cars on this particular line are empty, instead of "generally" loaded, the corrected statement is immaterial to the general scope and purpose of the finding. The obvious design was to show that while one road secured more or less return loading, very little was obtained by the others. Whatever difference there may be between the record testimony on this point and proof which could now be given, would have no important bearing upon the other and controlling facts which induced the original ruling. The same result would have been arrived at upon the assumption that this line received no greater benefits from south-bound traffic than the other roads, and its more favorable situation in that respect merely fortifies the reasons for the conclusion reached.

It is further alleged that the Commission erred in assuming the same distances from the various basing points to the respective destinations, whereas in fact there is considerable difference in that respect; and it is also suggested that this variation makes the rate per ton per mile on the Savannah, Florida & Western Railway different as to each of these places. This criticism is technically correct; but the variations in distance of these several localities from New York and other northern destinations are so trifling, in comparison with the long haul from all of the Florida points, that they can obviously be disregarded without prejudice to the defendants. Using the 172 mile haul from Jacksonville, the Savannah, Florida & Western received 1.88 cents per ton per mile for its proportion of the old rates, and gets 2.6 cents under the advanced rate. Taking the average distance from all the base points, which defendants now state is 197 miles, the figures are respectively 1.65 and 2.28. The advance in one case amounts to .72 cents per ton per mile, and in the other to .63 cents, a difference of only nine-tenths of a mill. Even assuming, what the defendants have not asserted, that the traffic is so divided between the various basing points that the average distance is a just basis of calculation, the change in figures, necessary to correct the alleged error in respect to the rate per ton per mile, is wholly insignificant. Besides, the Commission did not find these distances to be the same. It is distinctly set forth in a foot note to the table on page 10 of the report, that "mileage given above is from Jacksonville." The same note also says, "divisions apply from Jacksonville and Callahan only," meaning, of course, the division given in the table. Again, on page 12, in treating of the proportions of the through rates, the Commission used Jacksonville as an illustration, and evidently did so for the sake of convenience throughout the whole opinion. Absolute accuracy upon this point would have required numerous and complex computations of no value in themselves and throwing no light on the general question.

The fifth claim is that the Commission was in error in considering the proportion of the through rate which the Savan-

nah, Florida & Western Railway Company receives, and in practically determining therefrom that the orange rate was five cents too great; and leave is asked to show the origin of this division, the reasons therefor and its reasonableness.

The affidavits of H. S. Haines, vice-president of the Savannah, Florida & Western Railway, and G. M. Sorrel, general manager of the Ocean Steamship Company, are submitted in support of this allegation. Whatever may be the origin and reasons for the division of through rates by the defendants, they can have no possible effect upon the consideration by the Commission of such divisions *as they actually exist* in an investigation of rates where all the different lines concerned in the traffic are parties and equally subject to the provisions of the law. But it was specifically stated in the opinion that, "while the complainant has no interest in the division the defendants make between themselves, and that division does not determine what the charge to the public should be, yet it is not without significance in determining what are reasonable rates for the whole distance on the lines in question." The subject of investigation is the aggregate charge of several connecting carriers for through transportation. Each of them participates in the service and shares in the compensation. They all agree as to the proportion which each shall receive from the revenue produced by their joint operations. The division of earnings under this arrangement is an incident of the traffic which may properly be noticed. It is pertinent to the inquiry. As an independent fact it determines nothing, but it has some bearing and significance and may fairly be taken into account in forming a judgment upon the whole case. Our condemnation of the advanced rate in question did not result solely from the evidence relating to its division, although the large proportion allowed to the Savannah, Florida & Western was not without influence in that direction. It was one of the reasons for considering that rate unreasonable, and in so regarding it no error was committed.

The sixth charge is that the Commission did not give due weight to the circumstances that lumber, naval stores and

fertilizers formed more than half the entire tonnage of the Savannah, Florida & Western, and that the cost of hauling these articles are so moderate as to account for the comparatively low average of expense to this road in carrying a ton of freight a mile. This allegation simply assumes error. The statement put in evidence, as part of the testimony of the general freight agent of that company, and which is included in the sixth finding of the Commission, shows the number of tons of all the principal articles transported by that company during the year ending June 30, 1890, to be 1,099,460, of which 358,672 tons were lumber and wood, 136,121 tons naval stores, and 65,652 tons fertilizers, or an aggregate of 560,445 tons. This statement was before the Commission and was duly considered, as was also the table on page 11 of the opinion, stated to have been made up from reports of the defendant companies of the receipts and estimated cost of carriage per ton per mile during the fiscal years ending in 1889 and 1890. By that table the Commission was informed, among other things, that the Savannah, Florida & Western received for carrying a ton a mile during the year ending in 1890, over and above estimated cost, 4.13 mills, and that, counting the Atlantic Coast Line roads as one and the Washington Southern roads as one, it received considerably more per ton above estimated cost than either the Richmond, Fredericksburg & Potomac, Philadelphia, Wilmington & Baltimore, Baltimore & Potomac, Washington Southern, Pennsylvania or Florida Central & Peninsular roads, and was only exceeded by the Seaboard & Roanoke, Atlantic Coast Line roads, and by the Charleston & Savannah, under the same management as its own; while it was under a *greater estimated cost of carrying a ton a mile* than the Richmond, Fredericksburg & Potomac, Washington Southern, Pennsylvania, Charleston & Savannah or Atlantic Coast Line roads, and such cost was only exceeded by the Florida Central & Peninsular, Baltimore & Potomac, Philadelphia, Wilmington & Baltimore and Seaboard & Roanoke.

The fact that such cost was comparatively low is entitled to much consideration, but cannot be controlling in the light of information afforded by this table. This estimated cost

was deducted from the rate per ton per mile, received by this company from its proportion of the orange rate, to show how much above estimated general cost that proportion was. (See page 12). In this connection the Commission took occasion to say, that "no definite and reliable data are furnished as to the *actual* cost to the carrier of the orange traffic." (Page 13). Qualified by this statement it was quite suitable to use the estimated cost for purposes of illustration, and any inferences to which it led, were clearly legitimate. The character of the commodities making up the gross tonnage of this road, the revenue derived from the transportation and the relation of the orange income to its other earnings, were fully and carefully considered; and the Commission, as they still believe, were sufficiently impressed by the evidence in that regard. The proof upon this point was persuasive, but not convincing. Against it was other testimony deemed more weighty and conclusive. Nor does it appear that anything new can be shown or said on this branch of the case. All that is now claimed or suggested was brought to our attention in the original proceeding. A rehearing would only reiterate the facts and repeat the argument. They were thoroughly considered before and the opinion then formed is unchanged by further reflection. We are satisfied that this allegation of error cannot be sustained.

The seventh error complained of relates to the perishability of Florida oranges as compared with those produced in California and the Mediterranean countries. Several affidavits, including those showing payment of damages, were presented by the petitioning defendants in support of this contention. They are all to the effect that the Florida orange is a rich and tender fruit, so delicate in its nature that it must be carried with unusual speed, and will not endure the same delays in transportation and handling as the California or imported orange. An instance is given where a steamer towed a vessel in distress to Norfolk, which caused her voyage to New York to be extended less than 48 hours, yet claims were made by consignees of oranges on the ground that they were damaged by delay. Conceding that Florida oranges are more perishable than those raised on the Pacific



coast or near the Mediterranean Sea, there does not appear to be serious variation from fact in the report of the Commission. Upon this point the following language was used: "Moreover, it does not appear that the rapid service and special agencies employed in the carriage of oranges are necessarily required by the nature of the commodity. While spoken of as 'perishable' in the testimony of the carriers, it is evident that this characterization is correct only to a limited extent. As is well known, oranges in considerable quantities are shipped by rail across the continent, and brought here also in numerous cargoes by slow vessels from the Mediterranean and other countries. It is an exceptionally hardy fruit and well adapted to long transportation." When read in connection with what is stated further on in the opinion, this cannot be held to mean that no rapid service and none of these special facilities are required for the traffic in question; but the dominant thought expressed is that competition between the lines for this great and growing business has been largely instrumental in bringing the service to its present state of efficiency. All fruit is more or less perishable. The term is relative, and was understood to indicate comparative qualities. That contrast with other kinds of fruit was intended is put beyond question by the language used in the second sentence after the above quotation, to wit: "In general desirability as freight it differs widely from those more delicate and short-lived products which must be speedily consumed after they are gathered and which from their inherent qualities, are ordinarily rendered valueless by accident or delay in transit." Not even the defendants will contend that the Florida orange is as perishable as the Florida strawberry. It is quite immaterial in this proceeding whether the Florida orange is or is not as hardy and well adapted to long transportation as the California or Mediterranean orange. If it is in fact exceptionally hardy and well adapted to long transportation *as compared with other fruits*, the statement was correct and there is no error in the finding. The fact that Florida oranges are carried in large quantities by water routes a thousand miles long, is a sufficient answer to the charge now under consideration. Here are several different



lines in rivalry for this patronage. One is the quick all rail line; others go by rail and water through Savannah and Portsmouth; others still by river and ocean from Florida ports. They differ in their facilities and in the length of time required for reaching a common market. All these carriers were parties to the proceeding. All of them agree as to the difference which shall exist between rates over their respective routes. All render special service in competition with each other. Yet under this arrangement the water lines get a share of the business which warrants their continued efforts to secure it, and indicates their ability to carry and deliver the traffic in satisfactory condition. The situation illustrates the legitimacy of competition in facilities and service, as compared with the frequently illegitimate and always fickle competition of unequalized and unstable rates.

It occurs to us, also, that the argument based upon this claim of extreme perishability loses much of its force, in view of the small amount paid for damages occasioned by loss or delay in transit. Compared with the volume of this traffic and the large revenue which it produces, the sums refunded to injured shippers appear quite insignificant. On two years business the total damages paid by the Savannah, Florida & Western, for which it was wholly responsible, appear to be less than \$800; yet during that period it carried at least 125,000 tons of oranges, on which its charges were nearly half a million of dollars. Tested by this standard, which gives some indication of the hazard attending its transportation, this article does not seem to be exceptionally fragile or its carriage unusually precarious.

The eighth ground relied upon is not so much an assignment of error as an application to introduce evidence showing that the conditions affecting the transportation of oranges by rail to New York and Chicago, respectively, are substantially the same. We are unable to see the material bearing of testimony to that effect, for the fact might be admitted without aiding the defendants or leading to any different conclusion. Whatever may be the similarity in other respects between the railroads running from Florida to the northwest,

and those by which her productions reach northeastern destinations, the latter are operated against water competition to which the former are not subjected. But even if this modifying feature were absent, the comparison proposed would be of little value and can safely be excluded.

The remaining assignment of error relates to that provision in the original order which awards reparation for injuries resulting from the advance of rates in November, 1890, so far as that advance was adjudged to be unlawful. The contention of the petitioners that some intimation was made during the trial, to the effect that such a requirement would not be imposed upon the carriers, is not sustained by the stenographer's minutes or by the recollection of the only present member of the Commission who attended the hearing. The record discloses no remark or observation which accords with this alleged understanding. The demand for damages was plainly asserted in the complaint, and unmistakably insisted upon while it was under investigation. In the brief of complainants' counsel, which was served upon the opposing attorneys before theirs was submitted, the question of reparation was discussed at considerable length; but the answering argument, while setting forth several reasons against the allowance of any such claim, contains no suggestion that its consideration was unexpected, or that its reiteration was a surprise. The direction for restitution was the logical outcome of the main determination, and obviously necessary to a complete and consistent decision. The circumstance that the nominal complainant was not a shipper, and therefore had no pecuniary interest in the controversy, does not affect the principle involved, nor make unsuitable a ruling which fixes the basis of reparation to those who have paid unlawful charges. If the position of the petitioners upon this point is sound, no injury to them can result from the order, for they will be entitled to a jury trial upon the issue to which it relates. On the other hand, a failure to pass upon the question of damages in this proceeding might embarrass or defeat the prosecution of claims by those whom the defendants have compelled to pay the unauthorized rates. Nothing upon

this proposition need be added to the language used by us in a recent decision, except to say that this case was brought subsequent to the amendment therein referred to.

“A procedure for the enforcement of lawful orders of the Commission, founded upon controversies requiring trial by jury, having been provided by the amendment of March 2, 1889, of the sixteenth section of the Act to regulate commerce, it is the duty of the Commission to pass upon the question of reparation for past damages whenever a claim is made therefor.” *Macloon v. Chicago & Northwestern R’y Co.*, 5 I. C. C. Rep. 84; 3 Inters. Com. Rep. 711.

We have thus reviewed the alleged errors and mistakes in the report and opinion heretofore announced in this case, and are unable to find in them any tenable ground for reopening the investigation. While some of the statements included in the various findings are technically incorrect, the variations from exact figures and actual facts are quite insufficient to occasion serious misgiving. The discrepancies pointed out are trifling in character and inconclusive upon any material issue. All that is now claimed by the petitioners may be conceded without varying the essential features of the controversy or in anywise disturbing the original conclusion. The circumstance that the tariff in force prior to November, 1890, was maintained by the defendants for several years, during which period the traffic largely increased and most of these special facilities were provided, with no satisfactory explanation of the great advance ordered at that time, far outweighs, in our judgment, all the mistakes and errors alleged to have been committed. So far from leading us to question the correctness of our former decision, we are rather confirmed in our belief of its substantial justice. The thorough re-examination of the case which this application has induced increases our conviction that the action of the carriers in making that advance, except to the extent which received our sanction, was from the beginning unreasonable in fact and therefore contrary to law. Giving due regard to all that is now suggested, and taking into account the cor-

rected and supplemental facts which a rehearing might furnish, we remain unshaken in our confidence that the rate already allowed affords adequate compensation for the services rendered, and find no reason for supposing that another trial would alter our opinion.

The application must be denied.

WILLIAM H. HARVEY v. THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

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Complaint filed December 21, 1889.—Testimony taken April 29, 1891.—  
Decided February 12, 1892.

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The action of the defendant in granting to members of the City Council of New Orleans and the clerk of that body, on account of their official positions, free transportation as passengers over all or some portion of its interstate lines, violates the Act to regulate commerce, and is unlawful. Case of Boston & Maine Railroad Company approved and followed.

*R. L. Tullis*, for complainant.

*T. L. Bayne*, for defendant.

REPORT AND OPINION OF THE COMMISSION.

**KNAPP**, *Commissioner* :

The complainant in this proceeding, William H. Harvey, accuses the Louisville & Nashville Railroad Company of violating the Act to regulate commerce, by granting to members of the City Council of the city of New Orleans, and to the Clerk of that body, free transportation as passengers over all or some portion of its interstate lines. No answer was filed by the defendant, and no witnesses called by it on the hearing. The testimony in support of the complaint was taken by deposition and is wholly uncontradicted. The material facts established are as follows :

FINDINGS OF FACT.

1. The complainant is a citizen of the United States and a resident of the city of New Orleans in the State of Louisiana.

2. The defendant is a common carrier operating various connecting lines of railway in the States of Louisiana, Mississippi, Alabama and elsewhere, and thereby engaged in interstate commerce.

3. For some years, at least, it has been the custom of the defendant, in common with other railroads, to give free passes between points in different States, to various state and city officials, members of legislative bodies and other public officers; and such free passes were granted to and used by members of the City Council of the city of New Orleans, and the Clerk of that body, in 1889 and 1890, and down to the time of the hearing herein in April, 1891. The passes issued to these latter persons entitled the holders thereof to free carriage as passengers to and between all places on defendant's road from New Orleans, in the State of Louisiana, to Mobile, in the State of Alabama.

4. The free transportation thus given was not connected with any business or commercial relations between the defendant and the respective persons so carried without charge, but was purely complimentary in each case, and granted solely on account of their official positions.

5. The passes in question appear to have been mainly used for incidental and pleasure travel, but they were equally available for other purposes and secured to the holders free carriage in defendant's cars whenever they desired it.

#### CONCLUSIONS.

The recent investigation of a similar complaint against The Boston & Maine Railroad Company, 5 I. C. C. Rep. 69; 3 Inters. Com. Rep. 717, resulted in a report and opinion which determines the decision in this proceeding. The conclusions set forth in that report were deliberately reached and express the settled convictions of the Commission. So far as we are concerned the question involved is no longer open to discussion. Our construction of section 2 of the Act to regulate commerce is, "that where the service by the carrier subject to the Act is 'like and contemporaneous' for different passengers, the charge to one of a greater or less compensation than to another constitutes unjust discrimination and is unlawful, unless the charge of such greater or less compensation is allowed under the exceptions provided in

section 22; and that where the traffic is 'under substantially similar circumstances and conditions' *in other respects*, it is not rendered dissimilar within the meaning of the statute by the fact that such passengers hold unlike or, as sometimes termed, unequal official, social, or business positions, or belong to different classes as they ordinarily exist in a community, or are arbitrarily created by the carrier."

The fundamental and pervading purpose of the law is equality of treatment. It assumes that the railroads are engaged in a public service, and requires that service to be impartially rendered. It asserts the right of every citizen to use the agencies which the carrier provides on equal terms with all his fellows, and finds an invasion of that right in every unauthorized exemption from charges commonly imposed. No form of favoritism and no species of partiality seems more odious or indefensible than that which accords to personal influence or public station privileges not enjoyed by the community at large. The free carriage of certain persons merely because they occupy official positions or have acquired some measure of distinction, offends the rudest conception of equality, and contravenes alike the policy and the provisions of the statute. The practices complained of in this proceeding are illegal, and must receive our condemnation.

The order of the Commission is that the defendant forthwith cease and desist from granting free passes or otherwise furnishing free transportation over its interstate lines, except as provided in the twenty-second section of the Act.

## THE LINCOLN CREAMERY v. THE UNION PACIFIC RAILWAY COMPANY.

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Complaint filed February 14, 1891.—Answer filed March 9, 1891.—Heard at  
Topeka, Kansas, June 16, 1891.—Decided February 13, 1892.

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1. On complaint of an unreasonable rate on butter in less than carloads from Lincoln, Kansas, to Denver, Colorado, it appeared that defendant's line between those points runs through a sparsely populated country, furnishing comparatively little business to the carrier, and also that the rate is common to numerous towns of importance at an equal or greater distance from Denver, and is maintained by all the roads extending into that territory; *Held*, that the charge complained of is not shown to be unreasonable, nor does the evidence furnish sufficient reason for interfering with a rate established by a number of roads and common to many communities.
2. Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found, is not sufficient to establish the unreasonableness of the charges complained of. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that the charges assailed are unreasonable and ought to be reduced.

*C. B. Daughters*, for complainant.

*John M. Thurston* and *V. C. Lockwood*, for defendant.

### REPORT AND OPINION OF THE COMMISSION.

**KNAPP**, *Commissioner*:

The sole complaint in this case is that the rate charged by defendant for the transportation of butter from Lincoln, Kansas, to Denver, Colorado, is excessive and unreasonable, and ought to be materially reduced.

The answer meets this charge with a general denial, and also alleges that the defendant is improperly proceeded against because the initial carrier of the commodity is



another and independent corporation which has not been made a party.

The following facts are found :

1. The complainant is a manufacturer of butter at Lincoln, in the State of Kansas, a town of about one thousand inhabitants, surrounded by a farming region and having considerable pasture land in its vicinity. The creamery has a capacity of 15,000 to 20,000 pounds of milk per day, but at the time of the hearing, June 16, 1891, was using only about 7,000 pounds. The supply is procured from the territory within a radius of six or eight miles from Lincoln. There is another creamery in the same county, but at a place some twelve miles distant. The price paid for milk varies, at different seasons of the year, from forty cents to one dollar per hundred pounds. A quart of milk weighs two pounds, and about four pounds of butter are produced from a hundred pounds of milk. The quantity of milk offered does not appear to be materially lessened by a reduction in the price, but it is probable that higher prices would somewhat increase the supply. The largest quantity received in a single day was 15,000 pounds, but that occurred sometime before the hearing. The falling off was caused by the failure of crops and the scarcity of hay and grain in that locality, rather than the shrinkage in the price of milk. In what is described as a "good season" the production of milk in the territory mentioned is equal to the capacity of the creamery. The cost of production is variable, depending on the relative scarcity of feed and other circumstances.

2. The defendant is a common carrier between various points in the State of Kansas, and Denver and other places in the state of Colorado; it is therefore subject to the Act to regulate commerce. Its main line in these States runs in an easterly and westerly direction some distance south of Lincoln. The Union Pacific, Lincoln & Colorado Railway runs from Salina on the defendant's line westerly through Lincoln and by way of Colby to Oakley, which is also on defendant's line. Traffic from Lincoln to Denver goes west over this

road to Oakley, and thence by defendant's line to destination. The Union Pacific, Lincoln & Colorado Railway appears to be an independent corporation, but through ownership of its stock or in some other manner is wholly under the control of the defendant. The two roads are apparently managed by the same officers, and the business at Lincoln is carried on by and in the name of the defendant. The bills of lading and freight receipts exhibiting the charges complained of, which were put in evidence, purport to be issued by the defendant, and its controlling and responsible relation to the traffic in question is clearly established.

3. For the last year and more the complainant has sold most of the butter made by it in Denver. It maintains a salaried agent at that point, and the prices obtained there have been sufficiently favorable to prevent shipments to other markets. The amount shipped between the middle of March, 1890, and the 1st of January, 1891, was about 68,000 pounds. The distance from Lincoln to Denver is 457 miles, and the rate on butter in less than carload lots is \$1.25 per 100 pounds. In addition to the freight on the butter itself about one-sixth more is paid on account of the weight of packages. The present rate has been in force since the complainant commenced business, but prior to that time was some 10 or 15 cents per 100 pounds higher. Before instituting this proceeding the complainant made some effort to secure a reduction of the rate in question, but without success.

4. The rate under investigation is made by the Trans-Missouri Association, of which the defendant is a member, and appears to be a blanket rate maintained by all the roads from all points in a considerable area of country of which the eastern boundary is the meridian of Topeka. Between that line and the Missouri River the rate to Denver is 5 cents per hundred greater. The rate from Lincoln, therefore, is the same as from Salina, Solomon, Minneapolis, Ellsworth and many other towns at an equal or greater distance from Denver. Some of these places are reached by two or

more roads which compete with each other for business, while Lincoln has no such competition. All the roads have the same rates between the same points.

5. The complainant, for the purposes of comparison, showed the rates on butter between various points in other sections of the country, as follows, viz.: From Elgin, Illinois, to Kansas City, Missouri, a distance of 530 miles, 60 cents per hundred; from the same point to Minneapolis, Minnesota, 400 miles, 50 cents per hundred; from Waukon, Iowa, to Kansas City, Missouri, 520 miles, 48 cents per hundred; from the same point to Omaha, Nebraska, 485 miles, 54 cents per hundred; and from Rochester, New York, to Boston, Massachusetts, 431 miles, 35 cents per hundred. All these places, however, are far to the east of Lincoln, in localities much more populous than the section where the rate complained of is in effect, and where the volume of business is very much greater and the conditions affecting the cost of transportation materially different.

#### CONCLUSIONS.

The facts disclosed in the investigation of this complaint do not, in our judgment, establish the unreasonableness of the rate in question. It is undoubtedly liberal, but we are not satisfied that it is unlawful. Under the present conditions of railroad operation in a section of country sparsely populated and furnishing comparatively little business for the carrier, we can not characterize as illegal a charge of less than 5½ cents per ton per mile for the transportation of butter in less than carload lots from Lincoln, Kansas, to Denver, Colorado.

There is no element of discrimination in this case. It is not pretended by the complainant that rival shippers receive more advantageous terms, or that other commodities are carried by the defendant at relatively lower rates. There is no claim of favoritism between persons or places; the injustice asserted is not partiality, but exaction. To sustain this general charge reliance is placed mainly upon the tariff itself, compared with the lower compensation accepted by certain

roads in other States for carrying the same article a corresponding distance. But neither this illustrative proof, nor such other facts and circumstances as have been discovered, seems to us sufficient. While we can well understand that the rate in question is deemed oppressive by the shipper, we are not persuaded that it exceeds the limits of legality. Where no discrimination is alleged, either as between different points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that the charges complained of are unreasonable and ought to be reduced. Comparison with rates in other localities where different conditions and modifying circumstances are found is not enough to establish the unreasonableness of the rate assailed. We are constrained to hold that the burden of proof has not been overcome in this case, and that we are not warranted in requiring lower rates for the transportation in question.

It appears further that the charges complained of are common to a considerable area of country and to numerous towns of importance at an equal or greater distance from Denver, and are maintained by all the roads whose lines extend into that territory. The question presented by the complainant affects, therefore, many localities and interests which are not represented in this proceeding. The investigation made by us furnishes no sufficient reason, as we conceive, for interfering with a system of rates established by a number of roads and common to many communities.

*The complaint must be dismissed.*

THE DELAWARE STATE GRANGE OF THE PATRONS  
OF HUSBANDRY v. THE NEW YORK, PHILADEL-  
PHIA & NORFOLK RAILROAD COMPANY *et al.*

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APPLICATION FOR RE-HEARING.

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Originally decided April 13, 1891.—Application for re-hearing filed May 11, 1891.—Hearing on application June 22, 1891.—Application denied March 18, 1892.

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*James A. Logan, George V. Mussey and T. H. Bayley Browne* for the application.

*E. H. Bancroft and John C. Higgins* in opposition thereto.

MEMORANDUM.

BY THE COMMISSION:

In the report and opinion of the Commission, filed April 13th, 1891 (3 Inters. Com. Rep. 552) it was decided (among other things) that certain of the freight charges by the defendant companies upon market produce, ordinarily known as "perishable freight" were unreasonable in themselves, and a reduction in the tariff thereon was ordered of twenty-five per centum upon some articles, and of twenty per centum on some others.

One of the claims of the complainant upon the hearing was that the rates were in violation of the fourth section of the Act, by reason of lower rates from Norfolk, Virginia, to New York, than from intermediate points. The fact was conceded on the hearing, but it was insisted that the traffic was not carried on under similar circumstances and conditions, because the Norfolk business was in the presence of sharp and controlling water competition. It was thought best, under all the circumstances of the case, which was marked by many months of negotiation between the parties looking to a set-

tlement of all the matters in the controversy, that an order should issue as to those rates which were adjudged to be unreasonable in themselves, leaving the question of the effect of the lower Norfolk rates to New York for future determination upon further proofs.

Thereupon the defendants filed a motion for a rehearing, and claimed, (1) that the former testimony did not warrant a finding that the rates upon articles, which were ordered to be reduced, were unreasonable in themselves, and it was claimed that the testimony to that effect, was in view of and limited to the unsatisfactory service which the defendants admitted had been rendered before that time, and which it was said had been so much improved as to be satisfactory; and (2) that the deduction made by the Commission that the rates were too high, because the earnings on the articles complained of in this case, between the starting point and New York, bore a disproportionate relation to the earnings of all other traffic, was fallacious.

As to the first objection which is presented above, it is proper to state that while some of the witnesses did say that the rates would be satisfactory, if the service was brought up to what it ought to be, this is not true as to all the witnesses, some of whom testified that the rates were unreasonable and without qualification. Besides, the question of the reasonableness of a rate does not depend always upon the opinion of witnesses, but is often determined, as the Commission has repeatedly said, by a comparison of the rates generally for the transportation of the same commodities, the rates charged upon other commodities having some, but a more remote, bearing upon the question. Evidence of this character is always within reach of the Commission, in its own records, and the question of the reasonableness of rates is one which is constantly before us, and when this case was under consideration, another case was considered and passed upon, in which all the features of this special service involved here, were pressed upon the attention of the Commission, and by the same parties in interest, as are now pressing this motion. From a careful review of the whole case, which necessarily includes not only the oral and other testi-

mony submitted, but also the evidence of records, which are always consulted, we are well satisfied that the result arrived at was just and fair to all the parties.

Upon the second objection above stated to the effect that the Commission made a fallacious deduction from the statement of the earnings of all other traffic, it may be said that the discussion of that subject was mainly by way of argument and for the purpose of testing the reasonableness of the rates by comparison with other traffic, and for the same commodities between other points, in which the defendants, or some of them participate.

In support of this second objection, the President of the New York, Philadelphia and Norfolk Railroad Company has filed a statement, entitled, "A comparison of the rates charged by the New York, Philadelphia & Norfolk Railroad, with rates charged by other roads on similar articles." In this statement, the rates are given in cents per hundred pounds, and per ton per mile, using for the purpose the station of Cape Charles only, which is the most remote of all the stations from New York, being 326 miles from that city, and 136 miles farther distant than the average of all the stations.

As was distinctly pointed out in the former decision of this case, the tariffs in vogue are not made up on all articles on an increasing rate according to distance. For the most part they are grouped, and the group rates extend over a very extended territory, in one instance (potatoes), the group being more than 200 miles in length, and to which a single uniform rate is applied.

Manifestly in dealing with rates so markedly grouped as these are, that is not a fair statement which is based upon the rate per ton per mile from that station of the group which is the *farthest* from the place of destination. Such a statement is worse than useless for it is actively misleading. Comparison of rates may properly be made, but a comparison of rates from a group of stations should be made from that station which is at the average distance of all stations from the place of destination.

Upon the line of the defendants, that station which would

fairly represent the average distance would be 190 miles from New York, and not 326 miles as is Cape Charles.

Assuming the mileage to be as above stated, and taking the article of berries, for illustration, the rate given per ton per mile, in the statement above alluded to and filed in support of the motion, is but 4 60-100 cents, figured on the mileage from Cape Charles. But the rate on berries from the station representing the average distance of all Peninsula points yields to the carriers an income of 6 63-100 cents per ton per mile. No further comment is necessary except to say that the same fallacy exists as to the articles other than berries, mentioned in the statement. A comparison of the very lowest of a group rate proves nothing; the defendants would hardly be satisfied with a comparison of the highest of a group rate, if it was claimed to be controlling of the question, yet such a comparison would be quite as fair as one made with the lowest of the group. A comparison of the rate which fairly represents the average of all the group rates, is the only comparison that ought to influence the question and it is that comparison which was made in the former decision.

After making the reduction of twenty per centum on berries, as the Commission has ordered, the defendants will still receive, on an average, 5 30-100 cents per ton per mile, which is seven mills more than the amount which is put forth in the comparative statement as the true amount of income derived from the rates on that commodity before putting into effect the reduction ordered by the Commission.

All the foregoing computations have been made upon the assumption that the distance from New York to Cape Charles is 326 miles. It appears from the records of the Commission furnished by the defendant companies that the distance is 310 miles only. If the correct mileage had been stated in the comparative schedule filed, the decreased mileage would increase the rate per ton per mile above the amount given in said statement.

Another feature of the comparative statement and illustrative of its misleading character, is to be found in that part which deals with a comparison of the rates on kale, spinnach and cabbage, with their market values. In this comparison,



the rates on these articles are given at 20 cents per hundred pounds, that being the group rate for all the stations south of Delmar, the rates north of Delmar being twice as great, although the distance is very considerably less. This characteristic of the existing tariffs was pointed out in the decision, which only reduced the rates *north* of Delmar and did not interfere with the 20 cent rate *south* of that station. It is not easy to see why the decision should be challenged by the citation of a rate with which it did not interfere.

*The motion for rehearing is overruled.*

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(No. 188.)

**THE TOLEDO PRODUCE EXCHANGE, THE CLEVELAND BOARD OF TRADE v. THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, AND THE BOSTON & ALBANY RAILROAD COMPANY.**

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Complaint filed April 1, 1889.—Answers filed April 26 to May 4, 1889.—Amended complaint filed June 7, 1889.—Answers filed June 24 to July 12, 1889.—Arguments filed by complainant June 10 and August 26, 1889.—Depositions for complainant filed September 30, 1889.—Hearing had September 30, 1889.—Decided April 6, 1892.

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(No. 251.)

**EDWARD KEMBLE v. THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY, THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY, AND THE BOSTON & ALBANY RAILROAD COMPANY.**

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Complaint filed January 18, 1890.—Answer filed February 7-24, 1890.—Hearing had June 6, 1890.—Brief for complainants filed July 18, 1890.—Brief for New York Central & Hudson River Railroad Company filed April 28, 1891.—Decided April 6, 1892.

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1. The Commission is a special tribunal whose duties, though largely administrative, are sometimes semi-judicial, but it is not a court empowered to render judgments and enter decrees. The rule of estoppel by record, which is at all times technical in character and applies to

the record of courts and proceedings before federal officials whose acts are final, is not applicable to the complaint of Kemble who had appeared before the Commission in a representative capacity as member of a committee of a complaining mercantile society in proceedings heretofore dismissed which involved questions similar to those presented in the case now under consideration and brought by him as an individual.

2. Defendants offered to waive objection to depositions taken without notice on behalf of complainant, the Toledo Produce Exchange, if all the evidence taken in certain proceedings which involved questions similar to those herein should be treated and considered as evidence in this case, and the offer was accepted but complainant's agent afterwards sought to rescind the agreement, although complainant had leave to put in whatever additional evidence is desired. *Held*, That the case should be considered according to the original agreement.
3. On complaints of unreasonable and discriminating rates from Chicago and other Western points to Boston, produced by the addition to rates from the same points to New York of a so-called arbitrary or differential of 10 cents on first class articles, 6 cents on goods of the second class and five cents on the other classes of freight, and which also involved the propriety of combination rates through intermediate points, the divisions of through rates between the carriers and the relation of lighterage charges in New York harbor to the rates in question : *Held*, That the question involved herein is the through rate as affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate, except for limited purposes. That it can make no difference to the shipper or the public how carriers adjust between themselves the expense of lighterage paid out of the through rate to New York. That the arbitrary differentials now charged are unlawful, and should hereafter be made by adding a percentage to the New York rate on shipments included in the six classes of freight from Chicago and points east thereof and west of Buffalo to Boston and other New England points, and that the defendants and other carriers interested be allowed twenty days to show cause by answer why order should not issue commanding them to desist from charging said arbitrary differentials and requiring said rates to Boston and New England points to be made by adding to the New York rate an increase of ten per cent. thereof, and if no such answers be filed that such order be issued forthwith.

*Denison B. Smith*, for Toledo Produce Exchange, etc.

*Edward Kemble*, in person.

*George C. Greene*, for L. S. & M. S. R'y Co.

*Frank Loomis*, for N. Y. C. & H. R. R. Co.

*Samuel Hoar*, for B. & A. R. R. Co.

*Ashley Pond*, for M. C. R. R. Co.

## REPORT AND OPINION OF THE COMMISSION.

**McDILL, Commissioner:**

The complaint first named, No. 188, was filed April 1, 1889. While it names only the parties above written as defendants, it complains against all eastern trunk railways making freight rates from western points to Boston, and points in New England having rates based on the Boston rate, and especially it complains of the Lake Shore & Michigan Southern and the other roads named as defendants, and states as the basis of the complaint, the differential charge of five cents per 100 pounds on 3d, 4th, 5th and 6th class freight, and of ten cents per 100 pounds on first and second class freight, from all western points to Boston and Boston points above rates on same classes from western points to New York. It is charged that the Lake Shore & Michigan Southern Railway, the Michigan Central Railroad, the New York Central Railroad, and the Boston & Albany Railroad, while making this differential charge of five cents per one hundred pounds are also connected in traffic arrangements, and make continuous lines with the Connecticut River, the Providence & Worcester and other roads, as well as the Boston & Albany, and that they only make and charge from Buffalo to Boston and Boston points, a differential of  $2\frac{1}{2}$  cents per one hundred pounds over the rate made and charged from Buffalo to New York, on all classes of freight below second class, and especially is this complaint made as to the sixth class which includes grain and flour.

As a specification of the result of the rate making complained of the following are given, being combination rates:

Rate from Danville, Ill., to Toledo and		
Detroit is per 100 pounds.....	10	cents.
Toledo to Boston and New England....	$24\frac{1}{2}$	"
	<hr/>	
	$34\frac{1}{2}$	"
Rate from Danville, Ill., to Buffalo.....		
Buffalo to Boston and New England....	$15\frac{1}{2}$	"
	<hr/>	
	$30\frac{1}{2}$	"

April 26, 1889, the Lake Shore & Michigan Southern Railway and Michigan Central Railroad answered, claiming that the complaint in the facts stated therein shows nothing done by either of the companies in contravention of the Act to regulate commerce, that all joint and through tariffs established or rates charged by said companies respectively with the New York Central & Hudson River Railroad Company and the Boston & Albany Railroad Company since April 7, 1887, from Chicago and other western points to Boston and Boston points have been duly published and filed with the Interstate Commerce Commission, and such rates and charges are and have been just and reasonable, and not unjustly discriminative against any description of traffic, nor against any person, firm, corporation or locality, thereby bringing about any undue or unreasonable prejudice.

Deny that respondents are associated together as one line of road, in making and charging the differential from Buffalo east, or that they are party to any arrangement by which a differential from Buffalo to Boston and Boston points of only two and one-half cents per hundred pounds, is charged over New York rates, on classes of freight below second class; deny that at New York there is a terminal charge of three cents from western points; allege that circumstances and conditions exist which render a higher through rate from points on the Lake Shore & Michigan Southern, and Michigan Central roads, to Boston and New England points which take Boston rates than to New York just, proper and reasonable; that some of such circumstances are clearly and truthfully stated in the report and opinion of the Interstate Commerce Commission in the matter of the Boston Chamber of Commerce against the Lake Shore & Michigan Southern, the New York Central & Hudson River and the Boston & Albany Railroad Companies, decided February 15, 1888, which report and opinion and the facts and conclusions therein contained are made a part of the answer.

On the 4th of May, 1889, the New York Central & Hudson River Railroad Company and the Boston & Albany Railroad Company jointly answered that the complaint did not show that anything had been done by either of them in contraven-

tion of the Act to regulate commerce. That all joint through tariffs made since April 7, 1887, have been duly published and filed with the Interstate Commerce Commission, and the rates and charges thereunder, are just and reasonable, not unjustly discriminative, and do not subject any particular person, firm, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatever; nor do they bring to any one an undue or unreasonable preference or advantage.

Deny any association together of the roads named to charge the differential charged to Boston over that charged to New York, but allege that tariffs have been from time to time filed and published, and observed, containing the differential, and making rates which are just and reasonable, not unjustly discriminative, neither giving undue preference or advantage, nor subjecting any one to undue prejudice or disadvantage. Deny that out of all rates from western points to New York there is taken a terminal charge of three cents per 100 pounds.

Allege that circumstances and conditions exist which justify the differential, some of which are set forth in the report and opinion of the Interstate Commerce Commission, cited by the other defendants, being the case of Boston Chamber of Commerce against a part of these defendants, which report and opinion, facts and conclusions, are set forth as part of its answer.

June 7, 1889, complainants filed an amended complaint which substantially is the same as the original complaint in all material and pertinent allegations.

To this amended complaint answers were filed as follows: the Lake Shore & Michigan Southern Railway Company, June 24, 1889, the New York Central & Hudson River Railroad Company and Boston & Albany Railroad Company, July 12, 1889, but no new issues are raised by the amended complaint and answers.

At a session of the Interstate Commerce Commission held at Toledo, Ohio, May 24, 1889, the Detroit Board withdrew from the complaint and, being permitted so to do, ceased from that time to be a party complainant.

The case came up for final hearing September 30, 1889, at Chicago, Ill. No one appeared for the complainant. Ashley Pond, Esq., appeared for the Michigan Central; George C. Greene, Esq., for the Lake Shore & Michigan Southern Railway. It appearing that complainant had taken some depositions, Mr. Greene stated that he had not been served with notice of the taking of the depositions, but consented to their consideration if the evidence in the Boston Chamber of Commerce case was also considered as evidence in this case. On that date, September 30, 1889, George C. Greene, Esq., telegraphed Mr. Smith, who was complainant's secretary, and in charge of the complaint, asking if he objected to the use of all the evidence taken in the Boston Board of Commerce case. Mr. Smith answered the same day "I have no objection to the Boston evidence." Later in the day, however, but it would seem after the Commission adjourned, Mr. Smith telegraphed as follows :

"I telegraphed at six o'clock. I desire to modify it. I have not read the Boston evidence, but I ask that the brief referred to in my first argument be considered as part of our case as I then requested."

It seems to have been the understanding of the Commission that the case was submitted upon the evidence of complainant with the brief to which Mr. Smith refers and the evidence in the Boston Board of Commerce cases, and finding subsequently in the record the telegram above quoted, Commissioner Bragg, reviewing at length the record and its disclosures in a communication to Mr. Smith, used the following language: "If . . . you should come to the conclusion to submit the case for decision upon the depositions . . . the testimony in the Boston Chamber of Commerce case, the briefs of counsel on both sides in that case and the rates in effect, please let us know at your earliest convenience, and if you should conclude otherwise we will be glad to hear from you."

On the 10th of May, 1890, Mr. Smith declined to submit the case and asked that copies of the arguments for complaint and brief be sent, which was done and he was advised

that the case was re-opened for evidence and argument upon the evidence when taken.

On the 14th of May, 1890, George C. Greene of counsel for Lake Shore & Michigan Southern Railway Company was also advised of the action above set forth.

On the 8th September, 1891, Mr. Smith enclosed memorials of the Board of Trade of the city of Detroit, the Produce Exchange of Toledo, and on October 7, 1891, the memorial of the Millers' National Association of the United States, Milwaukee, Wisconsin; also memorials of the Board of Trade of Hartford, Conn., Providence, R. I., Indianapolis, Ind., the Omaha Commercial Association and the Board of Trade of the city of Peoria. They all ask an order forbidding the further imposition of this differential on all articles in class six of the railway freight association and claim that whatever potent reasons may have existed in time past for the differential under present conditions they have entirely lost their force and validity.

That neither adverse grades nor curves nor distances in New England justify such additional charges.

That while originally the added rate must have been given to the New England roads, now it is pro-rated from the west to points of destination, and thus the railways are charging this freight on precisely the same commodities to Boston from the same points in the same trains in excess of the rate to New York and other points.

The Commission is thus brought to consider the case upon a record of rather doubtful character as to the evidence adduced, but upon consideration, and for reasons hereafter given, are led to believe that the record, as it now stands, presents sufficient to enable an intelligent answer to the inquiry raised by the complaint, which is, whether or not the arbitrary differential in rates between Boston and New York is reasonable and just, and whether it gives any undue preference or advantage to any particular locality, and whether it is unjustly discriminative.

In No. 251, *Edward Kemble v. the Lake Shore & Michigan Southern Railway Company, the New York Central & Hudson River Railroad Company, and the Boston & Albany*



Railroad Company, the same or a similar question is involved.

This complainant alleges that he is located at Boston, Mass., carrying on the grain and flour business under the firm name of Kemble & Hastings.

That the roads named as defendants by joint arrangement form continuous lines from Chicago to New York City or from Chicago to Boston *via* Albany; the Lake Shore & Michigan Southern from Chicago, Illinois, to Buffalo, N. Y., a distance by its line of 538 miles, the New York Central extending from Buffalo to Albany 301 miles and thence to New York City 145 miles and the Boston & Albany from Albany, N. Y., to Boston, Mass., 201 miles. That ever since April 5, 1887, the defendants have been engaged in transporting flour and grain by a continuous carriage from Chicago to New York City and also to Boston, and are subject to the Interstate Commerce Law.

That great quantities of flour and grain go from Buffalo to New York, and other great quantities from Buffalo to Boston, but as to each the transportation thereof by the Lake Shore & Michigan Southern Railway is and has been a like and contemporaneous service of a like kind of traffic under substantially similar circumstances and conditions.

That as to all these shipments from Chicago to Buffalo and thence to Boston the rates are and have been unjust, unreasonable and unjustly discriminating.

That the rate per hundred pounds and the rate per carload to Buffalo on Boston bound flour and grain, has exceeded the rate over the Lake Shore & Michigan Southern Railway on New York bound flour and grain over the same road, 2 cents per hundred pounds and about six dollars per carload.

That it costs no more to ship flour and grain from Chicago to Buffalo when Boston bound than when New York bound. That the continuous through rate from Chicago by defendant's line to New York is 25 cents per 100 pounds, or seventy-five dollars per carload of 30,000 pounds, while to Boston the rate is 30 cents per hundred pounds, or ninety dollars per carload of 30,000 pounds, and of this excess the

Lake Shore & Michigan Southern Railroad receives about six dollars per carload, for no extra service whatever.

That three cents per hundred pounds is deducted from New York rate for lighterage, so that said Michigan Southern road receives \$36.08 for hauling the New York car, and at the same time receives \$46.56 for hauling the Boston car.

That the charge from Chicago and other points west of Buffalo and between Chicago and Buffalo to Buffalo, is not made to depend upon cost and other legitimate circumstances and conditions, but upon the ultimate destination, whether New York or Boston. That the foregoing rates are contrary to the Interstate Commerce Law, and especially in contravention of the first, second and third sections thereof; and prays an order restraining the roads from doing the acts alleged.

February 7, 1890, the Boston & Albany Railroad answered, referring to and making its answer in the cases of the complaints of the Boston Chamber of Commerce, Nos. 61 to 63, of 1887, a part of its answer in this case.

Also alleges that Edward Kemble, the petitioner in this case, was one of the committee of the Boston Chamber of Commerce in the cases above referred to; that petition being filed July 22, 1887, and appearing in Interstate Commerce Reports, vol. 1, 391. That on page 754 of said report is found the decision of the Commission dismissing the petition.

That there is no substantial difference between the complaints set out in the petitions filed in these cases and in this case, that no new circumstances are alleged, and asks that the complaint be dismissed.

February 24, 1890, the New York Central & Hudson River Railroad Company filed its answer, declining to admit petitioner's statement as to petitioner's occupation and the name of his firm.

Alleges that the line of the Lake Shore & Michigan Southern Railroad extends from Chicago to Buffalo, 538 miles, there connecting with respondent from Buffalo to New York, 446 miles, and at East Albany and by the Boston & Albany Railroad, 201 miles, to Boston, forming continuing and connecting lines to Boston and New York from Chicago.

Admits that since April 5, 1887, it has been extensively engaged in the transportation of flour and grain in a continuous carriage thereof from Chicago and that it and its connecting lines are subject to the provisions of the Interstate Commerce Act.

That all the grain and flour from Chicago to Boston and New York by the continuous lines formed by respondent and its co-respondents has passed over the Lake Shore & Michigan Southern Railway, whether to Boston or New York.

Denies all other allegations of the petition except that it admits that the charge from Chicago to New York on sixth class merchandise is 25 cents per one hundred pounds or seventy-five dollars per carload of 30,000 pounds. That when the service is performed three cents per hundred pounds for lighterage is deducted before a division is made of the earnings for the continuous haul from Chicago or other points west of Buffalo; that the charge to Boston for the transportation of sixth class merchandise is 30 cents per hundred pounds or ninety dollars per carload. That the rate on sixth class merchandise from Chicago to Boston carried by water to points on the coast east of Portland is the same as the rate from Chicago to New York. Further answering, this defendant gives as reasons for the difference in rates from Chicago to Boston as compared with rates from Chicago to New York that such difference is just and reasonable by reason of longer distance from Chicago to Boston, increased cost of service from East Albany to Boston, heavier grades, smaller trains, greater number of engines, larger expenditures in fuel and for train service, longer detention of cars, greater volumes of business to New York than to Boston, greater storage facilities in New York, greater competition between the greater number of lines of railway to New York, competition of water lines reaching New York; that the lesser rate to points on the coast east of Portland, Maine, is just and reasonable and made proper and necessary by reason of competition of rail and water lines reaching those points.

That all these matters were fully proved and investigated by the Commission in the complaint No. 61 of Boston Chamber of Commerce v. these respondents; No. 62, Same v.

this respondent, and No. 63, *Same v. New York Central & Hudson River Railroad Company*. That petitioner was the chief promoter of those complaints, verified the petitions and should be estopped by the opinion and decision upon said complaints.

February 14, 1890, the Lake Shore & Michigan Southern Railroad filed its answer substantially similar to the answer of the New York Central road. This case was heard at Washington, June 6, 1890.

Before consideration of the evidence it seems necessary to pay attention to the claim made by all the defendants that Mr. Kemble, petitioner in one of the cases, is estopped from maintaining his complaint because in the cases of the Boston Chamber of Commerce against these defendants he was one of the committee appointed by the Chamber of Commerce to prosecute those cases and verified the petitions, and subsequently after investigation this Commission dismissed the petitions. The doctrine of estoppel of record does not seem applicable to the case under consideration. It is applied to the record and judgment of both general and inferior courts. The Commission is not a court. It is a special tribunal whose duties though largely administrative are sometimes semi or quasi judicial. It is required to investigate and report. The law creating the Commission does not mention its final act as a judgment. It renders no judgment, enters no decree. From these considerations it is not believed that the rule of estoppel by record, at all times technical in character, can be invoked by the defendants. It is true that the conclusive effects of judgments have been accorded and extended to the rulings of certain officials of the general government when exercising functions which are judicial in their nature; as to the decision of the United States Commissioner of Patents in granting and extending a patent, *Providence Rubber Co. v. Goodyear*, 76 U. S. 9 Wall. 788, 19 L. ed. 566; and to the decision of the Comptroller of the Currency upon matters within his jurisdiction in respect to the national currency. *Casey v. Galli*, 94 U. S. 673, 24 L. ed. 168, it will be found that in such cases the statute contemplated the act of the officer as final, but the whole scope and spirit of the

"Act to regulate commerce" seems to stamp the report and order of the Commission as in no sense final in the sense that the judgment of a court is final, except where the parties impressed by the wisdom and justice of the order acquiesce therein in cases like those here under consideration. It is therefore held that nothing in the record of the Boston Chamber of Commerce cases, as compared with that of the case under consideration, estops Mr. Kemble from maintaining the complaint made by him. Not only is this believed to be a correct holding upon general principles, but it seems to be fortified by the additional consideration, that in the Boston Chamber of Commerce cases Mr. Kemble was only related to those cases as a member of that body and one of its committee, while he makes this complaint individually, and as a shipper and dealer in the character of goods, which he alleges is subjected to an unreasonable and unjustly discriminative rate. The character of his relation to the cases, is entirely different. In the one it is representative; in the other individual and personal.

It seems necessary also to determine another point raised by the record, which is whether the evidence in cases of the Boston Chamber of Commerce shall be considered as evidence in the case of the Toledo Produce Exchange *et al. v.* the Lake Shore & Michigan Southern Railway, the Michigan Central Railway Company, the New York Central & Hudson River Railroad Company and the Boston & Albany Railroad Company. It is shown by the record that at the time of the submission of the case, the agent of complainants, who managed the case for them, was not present, but an attorney of one of the respondents was present, and his attention being called to certain depositions taken by the complainants, he made known to the Commission that they had been taken without notice to the defendant which he represented. This was a substantial objection, if insisted upon, but he offered to waive all objection, if all the evidence taken in the Boston Board of Commerce cases should be treated and considered as evidence in these cases. He was advised to communicate with the agent representing the complainants, to ascertain whether such an arrangement

could be made with reference to the evidence. He did so, and an agreement to submit as proffered was consummated by telegraphic communication. Although the record is not entirely clear of doubt upon this point of time, yet it seems to fairly show that afterward and after the Commission had adjourned, complainants' agent sought to rescind the agreement on the ground that he did not fully understand it at the time it was made. Delays in further action were thus brought about and much correspondence had; and complainants were allowed to put in any additional evidence desired. Nothing additional was offered, however, except certain memorials of boards of trade and other commercial bodies being in the nature of prayers for the same action asked by the original complaint. To avoid further delay in a case, already unavoidably long delayed, it seems proper to the Commission to hold that the case should be considered upon the basis of the original agreement, namely: the evidence offered by the complainants, including the depositions taken without notice, and the evidence offered by defendants, including the evidence taken in the Boston Board of Commerce cases. As to the propriety of this course and as justifying it, the following suggestions are made: The facts shown by the whole record are almost, if not altogether, either admitted or established by uncontradicted testimony. The hearing being an investigation held for the purpose of making a report, upon which an order is to be based, the ascertainment of the facts rather than the method of their ascertainment should be considered. The evidence seems to be entirely pertinent to the inquiry to be made, and the agreement should be maintained, especially as ample opportunity and time have been given to allow complainants to offer any additional evidence deemed necessary.

Upon the record thus explained, the following facts are found:

It is, and for many years has been, the custom of the various lines of railway leading from Chicago and other points between Chicago and Boston and west of Buffalo to make the Boston rate by adding to the New York rate an arbitrary

additional rate styled in this record a differential of ten cents per hundred on first and six cents per hundred on second class freight, and five cents per hundred on third, fourth, fifth and sixth class freight.

The articles of flour and grain are in the sixth class and subject to an arbitrary differential of five cents per hundred pounds to Boston as compared with New York.

This differential is based upon the greater distance to Boston from Chicago and other western points, heavier grades, smaller trains, necessitating increased expenses, the train service and other conditions. At the time the differential was established by arbitration the rates were much higher than now, and as rates generally have lowered, the arbitrary being fixed, the percentage has risen from 10 per cent. increase *then*, to 20 per cent. *now*.

The shipments here considered from Chicago to Boston are made over the lines of the defendants, namely: from Chicago to Buffalo over the Lake Shore & Michigan Southern line; and the New York Central & Hudson River Railroad Company from Buffalo (at that point connecting with the Lake Shore road) to Albany on the Hudson River, and crossing by a bridge over the Hudson River to East Albany, thence to New York its southern terminus; it also connects with the Boston & Albany at East Albany, and freight is carried on the latter line to Boston.

The length of haul from Chicago to Buffalo *via*

Lake Shore & Michigan Southern is..... 538 miles

From Buffalo to East Albany *via* the New York

Central & Hudson River Railroad..... 301 “

East Albany to Boston *via* Boston & Albany..... 201 “

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1040 “

The rate from Chicago to Boston is a little less than 6 mills per ton per mile.

There are a great many rail routes from Chicago to Boston made up of the following lines:

Michigan Central Railroad,

Lake Shore & Michigan Southern Railway,

Chicago & Grand Trunk Railway,

Grand Trunk Railway,  
 Chicago & Erie Railroad,  
 Pittsburgh, Fort Wayne & Chicago Railway,  
 Pittsburgh, Cincinnati, Chicago & St. Louis Railway,  
 Pennsylvania Railroad,  
 Wabash Railroad,  
 New York, Chicago & St. Louis Railroad,  
 New York Central & Hudson River Railroad,  
 New York, Lake Erie & Western Railroad,  
 West Shore Railroad,  
 Delaware & Hudson Railroad,  
 Delaware, Lackawanna & Western R. R.,  
 Canadian Pacific Railway,  
 Canada Atlantic Railway,  
 New York, New Haven & Hartford Railroad,  
 New York & New England Railroad,  
 Rome, Watertown & Ogdensburg Railroad.  
 Central New England & Western Railroad,  
 New York, Providence & Boston Railroad,  
 Fitchburg Railroad,  
 Boston & Albany Railroad,  
 Boston & Providence Railroad,  
 Central Vermont Railroad,  
 Boston and Lowell Division, Boston & Maine Railroad,  
 Cheshire Railroad,  
 Boston & Maine Railroad.

These lines all afford to their shippers the same rate as is given by the respondents.

The rate from Chicago to New York and Boston on the several classes of freight is given below :

Class.	To New York.	To Boston.
1st	75	85
2nd	65	71
3d	50	55
4th	35	40
5th	30	35
6th	25	30



The carload rate is as follows on flour and grain (sixth class) 30,000 pounds to the car :

Chicago to New York.....	\$75.00
Chicago to Boston.....	90.00

The method of division of the through rate which is collected as a single rate from the shipper, is such that, on a car of flour or grain from Chicago to Buffalo bound to New York, the share or allotment of the Lake Shore & Michigan Southern road is \$41.00, and its share or allotment for a similar car to Boston is \$46.55.

With reference to all goods or freight originating at Buffalo and destined to Boston the differential is  $2\frac{1}{2}$  cents per hundred and not five cents.

The lighterage charges on shipments to New York and East Boston respectively are as follows :

To points in New York harbor other than New York Central Railroad Stations, per hundred weight 3 cents ; to East Boston for export charges per bushel as follows :

<i>Via</i> Warren Line.....	$\frac{1}{2}$ cent
Other Lines.....	$\frac{5}{8}$ cent
and wharfage charge of.....	$\frac{1}{2}$ cent per bushel

Lighterage and wharfage charges are paid by the carrier and deducted before division of the through rate.

The Lake Shore & Michigan Southern Road earns on a car load of corn, wheat or flour to

New York.....	\$41.00
To Boston.....	46.56
Difference .....	<u>\$5.56</u>
On a carload of bacon to New York.....	\$45.92
To Boston.....	49.66
Difference .....	<u>\$3.74</u>

A carload of wheat or corn from Chicago to New York, 30,000 pounds, pays \$75.

Divided as follows :

Lake Shore & Michigan Southern.....	\$41.00
New York Central.....	34.00

On a carload of wheat or corn from Chicago to Boston rate \$90.00.

The Lake Shore earns.....	\$46.55
The New York Central.....	26.05
The Boston & Albany.....	17.40

The receipts of grain and flour at New York from April 1 to October 31 in the year 1886 were as follows :

Grain .....	65,958,263 bushels
Flour .....	3,206,008 “

For the year 1887 :

Grain .....	65,492,262 bushels
Flour.....	3,373,520 “

The bushels of flour and grain received at Boston during the year 1886 were 35,865,063.

Percentage of the total amount of grain and flour received at the six great Atlantic ports respectively by New York and Boston :

At New York.....	52.5
At Boston.....	14.4
New York exported percentage.....	47.4
Boston .....	10.8

The competitive factors operating at New York are very strong. It is the chief seaport of the United States. There great numbers of steamship lines concentrate. It is the preferred port for all vessels coming to the United States. It receives in the season of navigation vast quantities of freight by the water routes and all rates to New York are the result of a fierce and constant competition.

It is evident that the real cause of complaint in each of the cases under consideration is the arbitrary differential to

Boston and it is claimed that it is excessive, unreasonable and a discrimination, unjust and hurtful in effect. The rate to New York has been fixed by sharp competition. Its great natural advantages and the water routes which serve it in the transportation of products have not been sufficient to keep the carriers by rail, even though originally built to serve other Atlantic cities, from agreeing upon a common rate to that city from all points which enables them in some degree to share the profits resulting from its carrying trade. The rate from Chicago to New York has become the basis of all through rates to other eastern from western points. No attack is in this case made upon that rate as unreasonable. But for the competition above mentioned that rate would probably be higher. Neither shipper nor carrier has claimed in this case that the New York rate is either too high or too low. It has come to be the fixed unchangeable element that in combination with other sums make the entire body of rates now under consideration. It is claimed that the necessity of competition on the one hand and a due regard to local and other claims on the other hand, years ago brought differential rates into existence and that their amount has been determined after a most careful study of distances, cost of service, differing seaport advantages, the effect of water competition, and all the other circumstances and conditions which experience has taught practical men to regard as affecting the question of rates.

It is apparent that the New York rate being the fixed quantity or base of every rate under consideration an error in the variable quantity will produce an unreasonable and unjust rate. As the great commercial advantages of New York are distributed and granted in some measure to the whole country by making the New York rate the basis of all rates, so by an imperfect or disproportionate adjustment of the amount of the variable, or differential the place affected by the particular rate may be deprived of some portion of the advantage fairly belonging to it from its enjoyment of the base rate, and the rate to that extent becomes excessive and unreasonable to that locality. So it seems that while the New York rate, plus the differential, may produce a rate that is not in itself unrea-

sonable, standing alone, and not contemplated in its relation to other rates, yet the question of the reasonableness of the rate depends upon the differential being fixed at a just and reasonable percentage.

In the case of the Toledo Produce Exchange *et al.* against the defendants the specific complaint is against the differential charge above the New York rate on classified freight from all western points to Boston and Boston points, and further that while making the differential charge of five cents per hundred on 3d, 4th, 5th and 6th class freight from Chicago to Buffalo the differential from Buffalo to Boston is only 2½ cents. No explanation of this latter fact which seems to be clearly established by the evidence has been afforded by any of the witnesses, and one witness at least who showed great intelligence and long experience in rate making frankly admitted that he was incapable of giving any good reason for it. Without giving too much importance or prominence to the fact, it may be noted as having some bearing upon the question as to whether the long established Boston differential is in excess of what it should be. While Mr. Kemble in his complaint attacks the differential on the ground that it cannot be right for the reason that it is so distributed amongst the carriers in question, that there is awarded or divided to one of the carriers more money for carrying the same kind of freight in the same train in the same direction the same distance over the same line in carloads when the car goes to Boston than to New York, thus giving to destination the force of a circumstance justifying a greater charge for an exactly similar service and urges that the differential is therefore unjust and unjustly discriminative, yet it is evident even in his case that it is the differential that he attacks. In the case of the Toledo Produce Exchange and others against the defendants the attack is directly made upon the differential and upon certain combinations of rates from western points to Buffalo and thence to Boston. As to the report of the case of the Boston Chamber of Commerce v. the Lake Shore & Michigan Southern Railway Company and others it is found that while concurring in the result reached in that case which was a denial to Boston of "equality of rates with New York



In 1882 the New York rate from Chicago upon the classes as near as they can be ascertained were as follows:

Classes.					
1	2	3	4	5	6
1.00	85	70	60	50	30

In the use of an arbitrary differential it will be noted that the percentage of increase greatly differed in 1882 from the present time.

The increments of rates to and from all points east of the Mississippi River and north of the Ohio are made by a percentage obtained with reference to rates to and from New York and other Atlantic or seaboard cities. The rates from Chicago to New York are taken as the basis and the rates to and from other points indicated are generally governed by the relative mileage of such points to the Chicago mileage. This relative mileage is sometimes determined upon the short line distance, at other times upon the long line distance, and sometimes upon average distance of all routes. It may be also noted that sometimes constructive mileage is thrown in as an element upon which to compute the percentage.

It is ascertained that under the long mileage or the average mileage of all routes the resulting percentage of the New York distance would give to Boston a higher rate than is now charged by the addition of an arbitrary. But it is believed that the general and proper method is to compute upon the short line distance, the cases of departure therefrom being exceptional in their character and themselves in the nature of an arbitrary.

The short line distance from Chicago to New York is 912; from Chicago to Boston 1001 miles. The Boston distance is accordingly 109.8 per cent. of the New York distance or say 110 per cent.

Applying this basis alike to all classes under the custom adopted for other rates the rates to Boston on each class would be, reckoning Boston at 110, as follows:

	Classes.					
	1	2	3	4	5	6
Chicago to Boston....	82½	71½	55	38½	33	27½
Producing reductions as follows.....	2½	0	0	1½	2	2½

and an advance on second-class freight of one-half cent.

In view of the fact that relative distances are generally considered in constructing rates it is believed that the arbitrary differential between Boston and New York should be abandoned and that the differential should be adjusted upon the basis of percentage, and that the percentage for Boston, assuming New York rate as 100, should be 110.

Complaint is also made that the rates from western points to Boston are not in due proportion and especially that certain combinations of rates appear to be unjust, showing that the combination through Buffalo to Boston is considerably less than the combination through Detroit or Cleveland. A table here set forth will show the rates from several of the principal western points to Toledo, Detroit, Buffalo, New York and Boston.

GRAIN RATES FROM VARIOUS WESTERN POINTS TO TOLEDO, BUFFALO, NEW YORK AND BOSTON.

FROM	Toledo, Ohio.	Detroit, Mich.	Buffalo, N. Y.	Pittsburgh, Pa.	New York, N. Y.	Boston, Mass.
	6th Class Rate.	6th Class Rate.	6th Class Rate.	6th Class Rate.	6th Class Rate.	6th Class Rate.
Cleveland, Ohio....			8		17½	22½
Erie, Pa.....			6			
Toledo, Ohio.....			10	11	19½	24½
Detroit, Mich.....			10	12	19½	24½
Peoria, Ill.....	13	13	17	17	27½	32½
Columbus, Ohio....			9½	9	19	24
Indianapolis, Ind..	10	11	14	13	23	28
East St. Louis, Ill..	14	14	18½	18	29	34
Buffalo, N. Y.....					13	15½
Pittsburgh, Pa.....					15	
Chicago, Ill.....	9	9	15	15	25	30

From the rates given in this table it will be seen that the combinations based on Buffalo produce lower rates from western points to Boston and New York than a combination of the rates *via* Detroit and Toledo. For example:

Chicago to Toledo.....	9 cents
Toledo to Boston.....	24½ cents
Total.....	33½ cents
Chicago to Buffalo.....	15 cents
Buffalo to Boston.....	15½ cents
Total.....	30½ cents
Chicago to Toledo.....	9 cents
Toledo to New York.....	19½ cents
Total.....	28½ cents
Chicago to Buffalo.....	15 cents
Buffalo to New York.....	13 cents
Total.....	28 cents

Although the combinations through Buffalo are shown to be somewhat lower than the combinations shown through Detroit or Toledo, it should be borne in mind that the through rate from each western point in the territory in question to New York and Boston, whether the traffic is routed *via* Toledo, Detroit or Buffalo, is in all cases lower than the combined rates *via* either of these points as shown above. The various combinations may be made from the table, which also shows the through rates. It is suggested that the share of the through rate accruing to the different roads in the route need not be here considered; the complaint involves the whole rate. Upon this point attention is invited to page 20 of the decision in the case of *The Boston Chamber of Commerce v. The Lake Shore & Michigan Southern R'y Co. et al.*

“Such adjustments may not be on the exact basis of cost of service in any case, and many other considerations may influence the parties in making them. The fact may be, therefore, that the Lake Shore road and the New



York Central road may each receive more in amount of the through rate to Boston from Chicago than to New York for the respective hauls to Albany, although the service to that point is identical, but the through rates are charged for the entire haul to the final destination, and are not governed by the service to some intermediate point in the line, or where the line diverges to different destinations."

The question involved appears to be the through rate as affected by the arbitrary differential, and it is not apparent that the question of rate combinations are pertinent or properly comparable with the through rate, except for limited purposes.

The question of lighterage at New York has been made quite prominent in the arguments, and it is urged that as lighterage at New York to certain station points of the New York Central is 3 cents per hundred pounds and paid by the carrier, that the real rate to New York is 25 cents per hundred less 3 cents lighterage, or to the shipper 22 cents, and that the comparison ought to be between a 22-cent rate to New York and a 30-cent rate to Boston, making the differential to Boston 8 cents and not 5 cents.

This position is not believed to be tenable. The three defendants carrying on a continuous line made up of their three several lines fix a through rate for the shipper. If lighterage becomes necessary to complete the carriage, they pay it out of the freight money paid by the shipper, and then divide or allot what is left. The rate to the shipper is 25 cents, and it seems it can make no difference to him or to the public as to the method by which the carriers adjust this common expense of lighterage in settlements between themselves.

The conclusion, therefore, is reached by the Commission that the arbitrary differentials of five cents per hundred on all classes of freight below second-class, of six cents per hundred on second-class and of ten cents per hundred on first-class are excessive, unjust, unreasonable and partake of the nature of an unjust discrimination against Boston and New England points and against shippers of the character of freight included in the six classes from points east of Chicago and west of Buffalo to Boston and New England points

and that the differential should no longer be made by an arbitrary sum added to the New York rate, but that said differential should be made by adding a percentage to the New York rate.

In the two cases under consideration some reference has been made to the equal charges from interior points to New York and Boston when articles are intended for export, and also to the extension of the Boston rate to Portland and points east of Portland, and to the allowance of a reduction to Boston dealers in grain and flour equal to the excess of the domestic over the export rate to Boston when they re-ship the same articles to Portland and points east of Portland, but nothing has been determined as to those matters, it being deemed desirable to consider the difference in charge to Boston in excess of the charge to New York alone and upon its own merits, entirely disconnected from any questions which might arise from considerations not necessarily involved in an inquiry as to the Boston difference, styled in this record the Boston differential.

It is plainly seen that the effect of the proposed change may be far reaching and may affect places and rates in a manner not now anticipated and it appears that many other lines than those operated by the defendants are interested in and may be seriously affected by the proposed change.

In *Rend v. Chicago & Northwestern R. Co.*, 2 Inters. Com. Reports, p. 313, it is said with reference to the proposition that the law is satisfied when a rate is reasonable and fair that: "An exception arises, when rates are so constructed that injustice is wrought by reason of their relation to other rates notwithstanding that the rate challenged may not of itself be unreasonable," but it is added "The question, however, of relative injustice . . . must be viewed upon broader grounds than a mere balancing of one rate against another. The entire field likely to be affected by any proposed change must be kept in view and if upon the whole, more injustice and trouble are likely to result from making the change, than from declining to make it, the Commission should hesitate to interfere."

The evidence is to the effect that a change in this rate will

affect the rate at a great many different points both eastern and western. It would be unfortunate if in seeking to bring about equality the result should be to bring about injustice and greater inequality. To the end therefore, that every interest involved may be fully protected and that the fullest possible light may be brought to bear upon the question, it is ordered that a copy of this report, and the conclusion of the Commission with reference to the Boston differential be served upon the respondents and each of them and upon the other roads interested, namely, upon the:

Michigan Central Railroad,  
 Lake Shore & Michigan Southern Railway,  
 Chicago & Grand Trunk Railway,  
 Grand Trunk Railway,  
 Chicago & Erie Railroad,  
 Pittsburgh, Fort Wayne & Chicago Railway,  
 Pittsburgh, Cincinnati, Chicago & St. Louis Railway,  
 Pennsylvania Railroad,  
 Wabash Railroad.  
 New York, Chicago & St. Louis Railroad,  
 New York Central & Hudson River Railroad,  
 New York, Lake Erie & Western Railroad,  
 West Shore Railroad,  
 Delaware & Hudson Railroad,  
 Delaware, Lackawanna & Western Railroad,  
 Canadian Pacific Railway,  
 Canada Atlantic Railway,  
 New York, New Haven & Hartford Railroad,  
 New York & New England Railroad,  
 Rome, Watertown & Ogdensburg Railroad,  
 Central New England & Western Railroad,  
 New York, Providence & Boston Railroad,  
 Fitchburg Railroad,  
 Boston & Albany Railroad,  
 Boston & Providence Railroad,  
 Central Vermont Railroad,  
 Boston and Lowell Division, Boston & Maine Railroad,  
 Cheshire Railroad,  
 Boston & Maine Railroad,

—and that they or either of them, or any other carrier subject to the law regulating commerce, affected by the proposed change, be given twenty days from the service of this report to show cause by answer why an order should not be made commanding them, and each of them, and all carriers engaged in interstate commerce subject to the law regulating commerce, to desist from charging, on all classified freight carried by them from Chicago and intermediate points between Chicago and Buffalo to Boston, an arbitrary differential above the New York rate of 10 cents per hundred pounds on first-class freight, six cents per hundred pounds on second-class freight, and five cents per hundred pounds on the third, fourth, fifth and sixth-class freight, and that hereafter the Boston rate from Chicago and points west of Buffalo to Boston and New England points shall be made by adding to the New York rate (as differential) an increase of 10 per cent. and that if within the time named in this order no such answers are filed, then an order shall issue fixing the Boston differential at 10 per cent. increase over the New York rate as herein outlined and indicated.

(No. 184.)

GEORGE RICE v. THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY, THE CINCINNATI, INDIANAPOLIS, ST. LOUIS & CHICAGO RAILWAY COMPANY, THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, THE UNION PACIFIC RAILWAY COMPANY, THE CENTRAL PACIFIC RAILROAD COMPANY.

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(No. 185.)

GEORGE RICE v. THE CINCINNATI, WASHINGTON & BALTIMORE RAILROAD COMPANY, THE OHIO & MISSISSIPPI RAILWAY COMPANY, THE ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, THE ATLANTIC & PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY.

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(No. 194.)

GEORGE RICE v. THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

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Complaints filed, in Nos. 184 and 185, March 26, 1889, and in No. 194, April 26, 1889.—Answers filed, in Nos. 184 and 185, April 18 to May 4, 1889, and in No. 194, June 24, 1889.—Hearing of testimony, December 10-12, 1889.—Hearing of argument May 13, 1890.—Briefs filed February 28 to June 9, 1890.—Decided April 9, 1892.

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1. The Commission possesses no authority to compel carriers subject to its jurisdiction to provide any particular kind of cars or other special equipment, but, in the absence of adequate equipment freely afforded to

all patrons alike, carriers should so adjust rates between those who can and those who cannot furnish their own conveyance that in the relative charges to each there shall be no discrimination against the dependent shipper.

2. Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of unlawful discrimination; but the amount actually charged on one commodity may be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation.
3. An allegation of unjust discrimination resulting from shipments of oil in tank cars owned by the shipper and low return rates on cotton-seed oil and turpentine in the same tanks in connection with mileage paid for use of tank cars, cannot be sustained without evidence showing mutuality of interest between the two classes of shippers or the payment of excessive car mileage.
4. Rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance. A regulation which promotes fairness and relative equality where the carriage of oil is confined to tank and barrel shipments might be an unjust and oppressive requirement where four-fifths of the transportation is effected by another mode. The question in these cases of free carriage of barrels in petroleum shipments is not now decided.
5. In assuming for transportation purposes that a barrel of refined petroleum oil weighs 400 pounds, and that a gallon of that commodity weighs 6.3 pounds when shipped in tanks, defendants use constructive or hypothetical weights so much out of proportion to actual weights that positive and measurable preference is constantly granted to the shipper by the tank method; and so far as that practice enables the tank shipper to secure the carriage of more pounds of freight for the same money than the shipper in barrels, it subjects the latter to unlawful prejudice. When actual weights cannot be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of conveyance.
6. The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier.

7. Charges of the Louisville & Nashville Railroad for the transportation of petroleum to several points on its lines are not only apparently unreasonable in themselves, but the existing disparity in rates to neighboring localities creates presumption of extortion in exacting the higher charges; moreover, as between tank and barrel shipments of petroleum, this adjustment of rates operates to the general advantage of the former mode of conveyance. Water competition to various points on its lines may furnish justification for rates to intermediate inland points somewhat higher than the railroad must accept to participate in business to the more remote locality favored with water carriage, but when charges for the shorter distance on these lines are three times those for the longer, the disparity is absurd and inexcusable. The lower figure must be unremunerative, or the higher must be extortionate. This defendant ordered to revise and correct its charges on petroleum to many interior and local points on its lines, and make such reductions and modifications therein as will remove the gross disproportions and inequalities now found to exist.
8. The case against the Louisville & Nashville Railroad Company is retained for further evidence and argument on the question whether water competition at various points justifies a departure from the general requirement of the fourth section, and for such further investigation of its charges to intermediate and non-competitive points, and direction in relation thereto, as may appear to be required. The cases against the other defendants are re-opened for further evidence and argument in regard to the reasonableness of rates on petroleum products to the Pacific coast from points east of the 97th meridian. All the cases are held open for additional evidence and argument on the question of the free carriage of barrels in the transportation of petroleum oil; also for such further direction to the carriers as may appear necessary in regard to the extent that weights now assumed should be made relatively more favorable to the shipper in barrels. Amendment of pleadings allowed upon the application of any party and on such notice as the Commission may direct.

*Franklin B. Gowen, William A. Day and William P. Montague, for complainant.*

*E. W. Strong, for Cincinnati, Washington & Baltimore Railroad Company.*

*Edw. Colston, for Cincinnati, Indianapolis, St. Louis & Chicago Railway Company.*

*Thomas F. Witherow, for Chicago, Rock Island & Pacific Railway Company.*

*John S. Blair, for Union Pacific Railway Company.*

*Charles H. Tweed, W. D. Guthrie and J. C. Martin, for Central Pacific Railroad Company and Southern Pacific Company.*

*Ramsey, Maxwell & Ramsey*, for Ohio & Mississippi Railway Company.

*W. W. Belknap*, for St. Louis & San Francisco Railway Company.

*Britton & Gray*, for Atchison, Topeka & Santa Fe R. R. Co. and Atlantic & Pacific R. R. Co.

*Edward Baxter*, for Louisville & Nashville R. R. Co.

#### REPORT AND OPINION OF THE COMMISSION.

**KNAPP**, *Commissioner*:

In the three proceedings above entitled the rates charged for the transportation of refined oil and other products of petroleum, and certain practices of the defendant railroads in connection therewith, are assailed by the complainant as violations of the Act to regulate commerce, which operate, in a variety of ways specified, to his prejudice and disadvantage.

Although each of these cases exhibits features peculiar to itself, they involve several questions common to them all, and are so related to a common subject that they have been appropriately heard and considered together. In order that the situation and scope of this controversy may be clearly perceived, it is needful to keep in mind the direction and extent of previous investigations of a similar character, and the conclusions therein reached by the Commission.

In the year 1887 several proceedings were instituted by Mr. George Rice, the complainant herein, against the Louisville & Nashville Railroad Company, and other carriers of refined petroleum, resulting in an extended examination, among other things, of the relative rates on tank and barrel shipments, in carload quantities, which were then made the subject of complaint. At that time, as the evidence disclosed, there were two general methods for the transportation of petroleum products, the one being in barrels containing an average of fifty gallons, and the other being in iron tanks of varying size, permanently affixed to the cars, and holding from three thousand to six thousand gallons each. These tank cars were not furnished by the carriers, but were



the private property of shippers who received from the railroads the customary mileage of three-quarters of a cent for each mile of haul. Under the methods then considered, the shipper in barrels was required to pay, at a fixed rate per hundred pounds, for the oil itself and the barrel in which it was contained, while the tank shipper was charged a gross sum per tank irrespective of weight or capacity. Comparison of the barrel rate with the average contents of the tanks in actual use demonstrated that the same volume of oil when transported in tanks was carried at much less expense to the shipper than when transported in barrels. In the judgment of the Commission the rate sheets then examined "were not considerately made with a view to relative justice," and the established charges for these two modes of transportation were pointedly condemned as discriminations against the shipper in barrels which violated the primary provisions of the Interstate Commerce Law. Based upon this conclusion orders were made in those proceedings which, in substance, required the carriers against which they were directed to cease and abstain from the unjust discrimination found to exist as between shipments in barrels and shipments in tanks, and to make the same charges per hundred pounds for the transportation of oil in barrels, including the barrels, as for the transportation of oil in tanks. In other words the rates in both cases were directed to be in proportion to the actual weight of the article shipped, the barrel being regarded as part of the shipment when the transportation was effected in that mode. No further or more specific requirement was formulated, and, presumably, no more explicit directions were deemed necessary to secure for both modes of shipment relatively just and equal treatment.

The reference here made to that investigation is not only for the purpose of pointing out and re-stating the precise questions which were then determined, but also to invite attention to the opinion in those cases delivered by Cooley, *Chairman*, which is at once a careful review of the facts disclosed by that examination, and an admirable exposition of the principles to be observed in fixing charges for the transportation of petroleum, so that unjust discrimination may be

avoided and equal advantages result to both classes of shippers. The argument set forth in that opinion is so persuasive, and its deductions so reasonable and conclusive, that many comments and suggestions may be omitted from this report which otherwise might be appropriate. It is to be regretted that some of the carriers, while ostensibly complying with the literal requirements of that decision, have apparently indulged in other practices, hereafter to be considered, which militate against its spirit and tend to defeat its general purpose. What has so far been said concerning this first investigation would be incomplete without calling to mind a proposition contained in *Judge Cooley's* opinion, which has been greatly relied upon by the railroads in subsequent proceedings, and which is enunciated in the following language :

“The rule should be to consider the tank a part of the car itself, and for the load carried in it the charge ought to be the same by the hundred pounds as is made on the transportation of barrels of oil in carload lots in other cars. Even then the shipper in barrels is at some disadvantage, for he must pay freight on barrels as well as on oil; but this, *as between him and the carrier*, is not unjust.”

Rice v. Louisville & Nashville R. R. Co., 1 I. C. C. R. 552; 1 Inters. Com. Rep. 742.

It must, however, be remembered that this statement was made with reference to the particular practices of the railroads which were then the subject of discussion, and in the investigation of a complaint which predicated discrimination upon the general fact that the rate sheets of those railroads established charges upon barreled oil according to the weight of the shipment, while tanks of oil were carried at a uniform price without regard to size or actual contents. Upon this conceded method of fixing rates for the two modes of transportation rested the essential grievance which was sought to be redressed; and the conclusions then announced, when stated in general terms, must be understood as limited in their application to the questions directly raised in those proceedings, and the special facts and circumstances therein

considered. No suggestion was made by the complainant in those cases that just and equal treatment to both classes of shippers required the free transportation of barrels, and no rule of charges imposed upon the carriers then proceeded against could reasonably hamper the Commission in prescribing equitable regulations for other carriers of the same commodity, operating in different localities and under widely dissimilar conditions.

The same observations apply to the succeeding case in which the relative tariffs on tank and barrel shipments of petroleum were the subject of consideration by the Commission.

*Scofield et al. v. Lake Sh. & Mich. So. R'y Co.*, 2 I. C. C. Rep. 90; 2 Inters. Com. Rep. 67.

The complaint in that proceeding alleged that the charges of the defendant railroad for the transportation of barreled oil, both in carload lots and in less than carload lots, were in themselves unreasonable and excessive, and that unlawful discrimination against the shipper in barrels resulted from the relative rates established for the two modes of carriage, even regarding the barrel as part of the shipment paid for. The report which followed that investigation reviews at length the circumstances surrounding the traffic upon the particular line and between the particular localities then under examination. The illegal advantages secured by the shipper in tanks, under the system of rate-making which that carrier maintained, were clearly set forth in the opinion, and an appropriate order directed their discontinuance. The question of free carriage for barrels was not presented by the pleadings, nor was its consideration suggested by the evidence or argument. Whatever, therefore, was said in that opinion, in the nature of formulated principles, must be interpreted by the issues actually determined which define the limitations of the decision.

The views thus briefly outlined found expression and were fully set forth, shortly after the last mentioned case was decided, in a special report of the Commission occasioned by the action of the Pennsylvania Railroad, which had not been a party to any of these proceedings, in exacting from ship-

pers of barreled oil payment for the transportation of barrels, which that company had previously carried without charge.

*In re Tank and Barrel Rates on Oil*, 2 I. C. C. Rep. 365; 2 Inters. Com. Rep. 245.

Justification for this course, which practically increased the rates to one class of its customers while leaving them unchanged to another and competing class, was claimed in the general principle of rate-making for the two modes of traffic alleged to have been established by the decision in the Louisville and Nashville case above referred to; and a desire to conform its methods to the presumed application of that principle was the avowed excuse for advancing the barrel rate. Thus the practice of one carrier, in charging for the weight of the barrel as well as its contents, alleged to have been sanctioned by the Commission, while condemning its other practices in relation to the same traffic, was promptly adopted, as a general and unvarying rule for petroleum rates, by another carrier operating in a different section of the country and under widely different conditions, without regard to its effect upon rival shippers over its own lines employing the two modes of transportation. That any such deduction was unwarranted is very forcibly explained in the opinion last mentioned, which reviews the prior decisions relating to tank and barrel shipments, and makes the explicit declaration that orders of the Commission directed against a particular railroad, based upon pure matters of fact respecting traffic in the locality served by it, are not to be regarded as general principles which must be applied in other localities, "where the peculiarities of the traffic may be so different as to require an altogether different ruling to accomplish the like just result."

Sometime after the decisions above mentioned were announced, the Commission investigated a further complaint relating to the tariffs maintained by another railroad for the respective modes of oil shipment already described, and decided to require of the carrier in that case, under the facts and circumstances then and there existing, the free transportation of barrels, as the most effectual method of securing

equality of treatment by that company of both classes of shippers. The situation and surroundings of the oil traffic on that line of road, as disclosed by the hearing, satisfied the Commission that the contention for free carriage of package, whether tank or barrel, should be sustained, and the defendant carrier was directed to conform its rates to that requirement.

Rice, Robinson & Witherop v. W. N. Y. & Penn. R. Co., 4 I. C. C. Rep. 131; 3 Inters. Com. Rep. 162.

This conclusion it will be perceived was arrived at in view of the special conditions affecting the oil carriage of a particular railroad, and the actual results to competing producers, who employed that road to reach a common market, of the relative charges imposed by it upon the two modes of shipment. It furnishes no binding precedent for a similar requirement in other cases where different conditions exist and different results are discovered. The facts of each situation are the standard by which the carrier's conduct is tested and measure the remedy for any injustice which that conduct occasions.

It is not proposed to make further comment on these utterances of the Commission from time to time, as special complaints have been examined and special and local phases of the general subject received consideration. The object of this summary is not only to outline the inquiries already made in respect to the rates for the transportation of petroleum, but also to point out the precise questions which were presented in the different proceedings, and the consequent scope and application of the various decisions. While it has been consistently held that general deductions are not authorized from the conclusions deemed just in particular cases, and that the peculiarities of each situation must determine its treatment, yet an understanding of the nature and extent of previous investigations, and the directions heretofore given when tank and barrel shipments have been found in competition, will be of manifest value when fresh complaints enlarge the field of inquiry and new contentions complicate the discussion.

Before the case of Rice, Robinson & Winthrop was

decided, but during the interval while it remained under consideration, the complainant herein instituted the several proceedings which constitute the title to this report, and also, at about the same time, a fourth proceeding relating to the same traffic, and similar to the other three in its allegations and unlawful conduct and its demand for relief. These cases are respectively known as Nos. 184, 185, 194 and 218 ; and those numbers will be used hereafter whenever convenience will be promoted by that designation. All of these cases were practically investigated together, and in the one last named the dominant question has been decided.

*Rice-v. At., Topeka & Santa Fe R. R. Co. et al.*, 4 I. C. C. Rep. 228, 3 Inters. Com. Rep. 263.

A brief synopsis of these complaints will show their general relations, and indicate the nature of the leading questions in each proceeding. The allegations of misconduct which are common to two or more sets of defendants, and which, by way of distinction, may be regarded as of secondary importance, will be hereafter noticed. Case No. 184 is brought against the various railroads composing a transcontinental line from the complainant's refineries at Marietta, Ohio, to the Pacific coast, over what may be called the central route, made up of the Union Pacific, Central Pacific and Southern Pacific Railways. No. 185 names as defendants the different roads forming a similar transcontinental route between the same places, by the lines of the Atchinson, Topeka & Santa Fe, the Atlantic & Pacific and the Southern Pacific. In both these cases the principal issue to which attention is now directed is the reasonableness of the through rate on barreled oil in carload quantities from Marietta, Ohio, to Pacific coast terminals or tide water points. That the charges for this transportation were *per se* excessive, and therefore illegal, was asserted by the complainant and denied by the carriers.

No. 194 is against the Louisville & Nashville road only, and is based upon alleged violations by that company of the "long and short haul clause" of the statute and other discriminating and unlawful practices which will be more specifically referred to in a later part of this report. In No. 218

the defendants complained of were a number of railroads forming several connecting lines to the west and southwest, terminating at various tide water points on the Pacific and the Gulf of Mexico. The names of the carriers proceeded against in this case, the territory traversed and terminals reached by them respectively, as well as the infractions of the law with which they were charged, are fully set forth in the report already made in that proceeding and need not here be repeated. It was conceded by those companies that, under the tariffs maintained by them for the traffic question, they were disregarding the prohibition of the fourth section of the Act, by charging on west-bound shipments a greater rate to certain intermediate points than to their several terminals; and the main controversy was, whether water competition from the eastern seaboard, *via* Cape Horn and the Isthmus of Panama, and other dissimilar circumstances necessarily limiting the charges which would secure through business by rail, justified this departure from the general rule of the statute. An extended investigation satisfied the Commission that such competition did in fact exist, and that it was so continued and controlling as to govern the rates at which the railroads could participate in the petroleum traffic to the Pacific coast. The facts and circumstances disclosed by that inquiry fairly demonstrated that rail transportation was compelled to approximate the lower charges of ocean carriage, or be excluded from any considerable business, at all places where both modes of shipment were available; and the conclusions arrived at, so far as the transcontinental lines were concerned, virtually permitted the defendants to maintain lower rates to these terminal and competing points than to the intermediate localities which were dependent upon railroad facilities alone. It was strenuously urged in that case, on behalf of the complainant, that even if a greater charge for the lesser distance was authorized by the water competition or other dissimilar conditions existing at California ports, nevertheless the disparity between through and local tariffs was unreasonable, and that the rates to intermediate points were in themselves so excessive as to constitute a violation of law which required correction. The Commis-



sion, however, held that this question, especially in view of the statements and admissions of counsel, was not a legitimate issue in that proceeding, and that the evidence relating to it was too meager and inconclusive to warrant its determination. The report actually made, therefore, goes to the extent only of sanctioning a lower charge on petroleum shipments to Pacific terminals than to intermediate points. The reasonableness of the several rates either in themselves or in relation to each other, has not been decided. In like manner and for similar reasons, the Commission declined to pass upon the further question presented in that case, as to whether the rail carriers to the south and southwest were confronted with such actual water competition, at various places on the Gulf of Mexico and its connecting rivers, as to exonerate them from the charge of unlawful conduct in making lower tariffs to those places than to many intermediate points on their respective lines. The information bearing upon this complaint was not deemed sufficiently complete and reliable, either as to rates or volume of water shipments, to furnish the basis for a satisfactory conclusion.

In these several proceedings it was suggested to the Commission by supplemental complaints that many railroads engaged in oil transportation, besides those named as defendants, might be affected by the rulings made concerning the various practices alleged to be unlawful, and thereupon appropriate orders were entered and duly served upon all, or nearly all, the principal rail carriers of the United States, apprising them of the questions raised in which they might be interested, and permitting such of them as desired to do so to become parties to the proceedings by entering an appearance and filing an answer therein. In pursuance of this notice a number of answers were subsequently filed; but none of the railroads so intervening are believed to sustain any peculiar relation to the general subject, and, as none of them were directly represented at the trial or argument of the cases, the aspect of the controversy is unaffected by their appearance. For this reason it is not deemed necessary to change the original titles or otherwise modify the form of this report.

This brief review of the history and situation of previous



investigations and pending complaints respecting alleged discriminations against shippers of petroleum in barrels, when competing with tank shippers of the same commodity, supports the reasons about to be advanced for the disposition which, in our judgment, should now be made of these cases, and the limited extent to which we feel justified, under present circumstances, in imposing specific requirements as to the traffic in question upon the defendant railroads.

The area of territory penetrated and served by these carriers forms a large and important part of the United States. So far from possessing uniformity of conditions affecting the methods and cost of transportation, it is a section of the country where many anomalous relations are found and the greatest variety of circumstances exists. Diversity of situation is the rule, similarity the exception. Some of these lines connect populous towns only a short distance apart, others stretch through wide regions comparatively unpeopled and unproductive. A few of them are measurably independent from the volume of their local business, the rest are forced to rely upon the traffic secured from connecting roads. The coast line of this territory is of vast extent, but even this general feature is complicated by the differences in accessibility and other incidents between ports on the Pacific and those on the Gulf. At every considerable place possessing the advantages of water communication, the railroads meet the competition, actual or possible, of carriers employing a cheaper mode of conveyance, and subject to no restraint or regulation under existing laws. Each of these places exhibits peculiarities of situation, with conditions varying and inconstant, yet at each of them the rail lines must approximate the rates by water, or abandon a business quite needful to their support. On the other hand, the traffic under consideration is one of great magnitude and importance. The use of petroleum oil for a great variety of purposes has become so general and constant that it may fairly be regarded as one of the necessities of life. It goes into nearly every household and supplies the daily wants of an immense population. Its market value is so low in comparison with its bulk, that the charges for its transportation largely affect its

cost to the consumer. The distribution of this staple article through the large section of country south and southwest from the place of production is mainly effected by the defendants in these cases and the water carriers with which they compete. In no department of inland commerce are fair and staple rates and equality of treatment of greater consequence to the public. Every variation in charges and every act of injustice, by which one shipper is permitted to gain an advantage over his rival, interferes with the free movement of this commodity, and inflicts manifest injury upon those who consume it. All the obligations of honest dealing and business morality should induce the carriers to make rates actually and relatively reasonable at every point, and to enforce such equitable regulations for the various modes of shipment as will secure to every community the full benefit of competition. To give specific directions and make exact and definite orders concerning this important traffic is felt by the Commission to be unwise at the present time, except as to matters clearly seen to be unlawful, and concerning which the information now at hand is deemed an ample basis for correct conclusions. It is now nearly three years since this series of complaints invoked examination of the numerous practices therein alleged to be illegal. The intense pressure and exacting nature of other duties, coupled with the calamities of sickness and death, have made their earlier consideration a physical impossibility. During that period such changes have taken place in the *personnel* of the Commission that only one member remains who participated in the original hearing. In that time, it must be presumed, the situation and surroundings of this traffic in the territory affected have been modified in important respects by new methods and new conditions. Whether all the practices which were then claimed to effect discriminations between different shippers are still continued by the carriers can only be conjectured, and whether apprehensions apparently well founded have been justified by results cannot be reliably inferred from evidence taken so long ago. In view of the changes incident to so great an interval, and the magnitude of the interests to which these cases relate, the present Commission believe

that final judgment should not be passed upon the fundamental questions involved, until further inquiry and investigation have added to the record such facts as have arisen since the controversy began, and given us fuller knowledge of existing charges and usages in the transportation of petroleum.

This general position appears to be fortified by some more particular observations. It has already been pointed out that cases 184 and 185 involve, among other things, the reasonableness of the through rate to Pacific terminals from all points east of the 97th meridian. But the relation of terminal to intermediate points on these transcontinental lines, for all the purposes of tariff making, is so intimate and controlling, that just and lawful charges in either case cannot safely be determined independent of the other. Comparison is a common and recognized aid to the formation of an opinion. In the absence of absolute standards reliance must largely be placed upon relative circumstances and contrasted conditions. What is a reasonable and therefore proper charge for the carriage of goods over the entire length of a given road depends in no small degree upon the rates deemed reasonable for shorter hauls on the same line. The through and local tariffs cannot ordinarily be separated without the risk of injustice in one case or the other. Whether a particular oil rate to the Pacific shall stand the test of investigation involves, to a great extent, the authorized rate to intermediate localities. The effect of the decision in No. 218 was to sanction a greater charge for the lesser distance, but the Commission deemed the evidence insufficient to measure the disparity or to prescribe the differences which would be regarded lawful. The whole question of the reasonableness of established tariffs to intervening and non-competitive points remains untouched. It may be further mentioned in this connection that during the last year there has been a considerable reduction in the Pacific rates, and that the through tariffs now in force do not greatly exceed the figures contended for by the complainant. It is evident, also, that what we are asked to decide concerning proper charges to the various terminals reached by these defendants bears quite

directly upon the the general subject of relative rates between Pacific and intermediate points on other transcontinental lines, which, in a variety of forms, is presented to us in other proceedings, and is now the subject of much consideration. For these reasons it seems unsuitable, at this time, to undertake the decision of Nos. 184 and 185, so far as the reasonableness of the through rate complained of is an issue in those cases. That question, in our judgment, should be passed upon in the light of present charges, customs and conditions, and in connection with the determination of reasonable rates for intermediate places on the same roads

Similar suggestions apply to the uniform or "blanket" rate from all points east of the 97th meridian, which was alleged to effect an unlawful discrimination entitling the complainant to relief. This subject was discussed in the report made in No. 218, and the method then in force, by which equal charges were applied to through shipments from all places in this territory, was not held to be prejudicial. Since that time this feature of tariff construction has been extensively modified by the voluntary action of the carriers, and we are disinclined to disturb the existing arrangement without further proof of its operation and effect. It is not to be inferred from this statement that either the former or the present practice in this respect receives our approval. We express no opinion as to its equity or lawfulness, but leave it open for such further examination as may hereafter be required.

The free carriage of barrels as the only method of equalizing the relation between the two classes of shippers was stoutly contended for in these proceedings. We are greatly impressed with the difficulties which this question presents, and have endeavored to give it the most thoughtful attention. Whether the advantages which the tank shipper apparently enjoys are a mere incident of his business, for which the carrier should not be held responsible, or whether these benefits result from discriminating usages adopted by the railroads, and their failure to supply all customers with a special vehicle suited to the demands of a special traffic, must be, in any particular case, a most perplexing inquiry. To require

the barrels in which this article is shipped to be carried without expense is contrary to the general and lawful custom which includes the package in the freight to be paid for, yet, in certain situations and under certain circumstances, there may be no other remedy for actual injustice, and no other effectual means by which the carrier can render equal and impartial service to every patron.

We have already taken occasion to point out the only instance in which this precise claim has been heretofore made or allowed, and in doing so have sought to emphasize the proposition that rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance. The proceeding in which the free transportation of petroleum packages was ordered appears to differ from those now under review in several important respects. In that case the length of the haul was relatively short, the volume of oil business large, and the various conditions, affecting value of service and cost of carriage, comparatively uniform from shipping points to destination. So far as appeared, the only modes of shipment for this commodity were the horizontal tank and barrels carried in ordinary box cars. In one way or the other the entire transportation of refined oil was effected, and there was sharp and earnest rivalry between producers employing these two methods for reaching a common market. In short, the Commission was satisfied upon the facts there disclosed that unfair and illegal preferences to the shipper in tanks resulted from the mere circumstance that packages of one sort were hauled without expense, while the others paid the same rate as their contents; and for this palpable and injurious discrimination there appeared to be no adequate remedy, except to require the free carriage of barrels. In the cases now under consideration different conditions are discovered, and inequitable results from a similar system of charges are not so clearly established. The lines operated by these defendants are much greater in length, extending southward to the Gulf and westward to the distant Pacific. They traverse a section of country quite unlike that which borders on the Atlantic. At every river and seaport terminal they encounter

the constantly lower rates of water carriage, and their business in other ways is conducted under varying and peculiar difficulties. Moreover, a large portion of the traffic goes by neither of the modes which have been herein compared. It appears from the evidence that nearly eighty per cent. of the oil carried by the transcontinental roads is shipped in cases, and barely seventeen per cent. in tanks. This fact alone is of great significance, and might well cause us to hesitate in applying to the situation now before us a rule deemed salutary where case shipments were unknown. A regulation which promotes fairness and relative equality when the entire carriage is confined to tanks and barrels might be an unjust and oppressive requirement where four-fifths of the transportation is effected by another mode. The large percentage of oil carried in cases introduces a new and important factor, and adds to the controversy an independent element which must be taken into account.

It is not improbable that the charges and methods challenged by the complainant are offensive to the spirit and purposes of the law. In some particulars they seem open to serious criticism, and we might infer that just conclusions would condemn many of these practices as unlawful. But we are not prepared to hold, upon the facts which have been shown and the knowledge we now possess, that the free carriage of barrels by these defendants should, at this time, be required. Before reaching that conclusion we desire to be made acquainted with the present situation of this traffic and the results exhibited by recent experience.

We are not, however, to be understood as sanctioning the system of rate-making for oil transportation by which tanks are carried without expense, while barrels are charged for the same as their contents. No such intimation is intended. We simply refrain for the present from requiring the defendants to modify their tariffs in this respect, and reserve further opinion for fuller information and more satisfactory inquiry. It may be that relative justice between these two modes of conveyance can only be secured by the free carriage of barrels, or other equalizing concession to that form of shipment, but a final determination to that effect does not seem to be war-

ranted by what we now know of this traffic on the lines in question. The carriers complained of cannot be unmindful of the obligations which the statute imposes, and must be aware that no regulations are unlawful which do not operate to the equal and impartial advantage of every patron without regard to volume of business or mode of shipment. The recognition of this paramount duty should induce such voluntary action as will accomplish the just purposes of the law, and obviate the necessity for more explicit directions.

Having thus indicated the disposition which, under the circumstances recited, we think should now be made of the principal issues in these several cases, we proceed to consider the remaining questions which are more or less important.

The substance of the other charges, without pursuing the order in which they are set forth in the various petitions, may be stated as follows :

1st. That the defendants fail and refuse to furnish tank cars to the complainant.

2d. That the rates on coal oil, as compared with the rates on cotton-seed oil and turpentine, are so adjusted as to unlawfully discriminate against the former and in favor of the latter.

3d. That the rates on cotton-seed oil and turpentine, transported north in tank cars which have carried coal oil south, are made so low as practically, in connection with the mileage paid by defendants for the use of tank cars, to effect a rebate or discrimination in favor of shippers of coal oil in tanks as against shippers of the same article in barrels.

4th. That the modes adopted by defendants of estimating the weight and quantity of oil in barrels and oil in tanks respectively, for the purpose of fixing the freight charges thereon, effect an unjust discrimination against oil carried in barrels and in favor of oil carried in tanks.

5th. That the complainant, shipping chiefly in barrels, is subjected to unreasonable prejudice and disadvantage in



comparison with other persons shipping mainly in tank cars owned by them.

6th. That the rates charged by defendants for the transportation of coal oil from Cincinnati and Louisville on the Ohio River to points south are unreasonable and unjust.

7th. That the defendants, in numerous instances specified, violate the 4th section of the Act to regulate commerce, in respect to long and short hauls, to the detriment and injury of complainant.

The first three of these grievances present no serious difficulty, and may be disposed of without extended comment.

As to the failure and neglect to furnish tank cars :

The Commission has several times decided that it possesses no authority to compel carriers subject to its jurisdiction, to provide any particular kind of cars or other special equipment. The reasons for this conclusion are stated at some length in the case of *Scofield et al. v. Lake Sh. & Mich. So. R'y Co.*, 2 I. C. C. R. 116, 2 Inters. Com. Rep. 76, and as the opinion there announced is still adhered to, the argument need not be repeated.

As to discriminations resulting from the relative charges for transporting coal oil on the one hand and cotton-seed oil and turpentine on the other :

The commodities in question are not at all competitive in the uses to which they are applied by dealers or consumers, and it is not easy to perceive that the market price of one, whether at the point of production or elsewhere, can appreciably affect the market price of the other. In the absence of some competing relation between different articles of traffic, there would seem to be no opportunity, by means solely of the rates imposed upon them respectively, for that unjust discrimination which the law forbids. Disadvantage to the shipper of one product can hardly be predicated upon the charges for transporting another product, differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of discrimination.



The amount actually charged on one commodity may, however, be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation. The rates on cotton-seed oil and turpentine may, therefore, have some bearing on the reasonableness of the coal oil rate, which is distinctly challenged in these proceedings, and in that connection will be hereafter considered.

As to discriminations resulting from shipments of oil in tanks, with low return rates on cotton seed oil and turpentine in same tanks, in connection with mileage paid for use of tank cars :

The sufficient answer to this complaint is the absence of any proof to sustain it. The evidence is clearly to the effect that the shippers of coal oil are entirely different persons from the shippers of cotton-seed oil and turpentine. No connection was shown between these different classes of shippers, and nothing appears from which it can be found that there is any agreement or understanding with the carriers, by which the shipper of coal oil in tanks is in any respect benefited by the low rates on cotton-seed oil and turpentine. The mileage paid on tank cars is the customary  $\frac{3}{4}$  of a cent per mile, but how much that amounts to per car, in any given period of time, is in no way disclosed ; nor is there other testimony in the record to support a finding that injustice to the barrel shipper results, as a matter of fact, from the payment of this usual mileage to the owners of tanks. No device for evading the law could be more unfair or offensive than a manipulation of rates on similar, but non-competing, articles of commerce, which had the effect of securing to a shipper, largely interested in both, an illegal advantage over a rival dealing only in one. If the refiners who send their products over these roads in tanks owned by themselves were shown to be identified with the return traffic conveyed in their own cars, the great disparity in rates, between coal oil carried in one direction and cotton-seed oil and turpentine brought back in the same vehicles, might well convict the carrier of discriminations most odious and reprehensible.

There may be some ground for suspecting a secret alliance or mutuality of interest between the two classes of shippers, and a complete disclosure of facts and circumstances, not now made to appear, might fairly establish, in these dissimilar charges for services apparently much alike, an intentional scheme for securing to shippers in tanks an unjust and unlawful advantage. But we cannot accept surmise for proof, nor find disobedience of the law in mere opportunity for wrong doing. Upon the record as it now stands, this particular contention can not be sustained.

For the proper determination of such questions as have not yet been considered, a brief statement of facts is necessary.

#### FINDINGS OF FACT.

1. The complainant in these proceedings is a refiner of oil and other products of petroleum, carrying on business at Marietta, Ohio, and other places, and having occasion to use the various lines of railroad operated by the defendants for the transportation of his merchandise.

2. The defendants are severally common carriers, under different corporate names, engaged in interstate commerce.

3. The two modes of transporting oil, which are made the special subject of this investigation, are wooden barrels carried in common box cars, often of inferior quality, and cylindrical iron tanks, either upright or longitudinal, permanently affixed to car trucks quite similar to those in ordinary use. The longitudinal tank car has no carrying space or capacity aside from the cylinder, and is sufficiently described by the terms employed for that purpose. The upright tank car is a species of combination car, often called "box tank," having a vertical iron cylinder at each end for carrying liquids, the space between being occupied with a wooden structure or box suitable for the conveyance of other merchandise. Tank cars are not furnished by the carriers, but belong to the shippers, or other persons or corporations, who receive from the defendants the customary mileage of  $\frac{3}{4}$  of a cent for each mile

of haul loaded or empty, with this exception, that longitudinal tank cars which have been loaded with oil for Pacific coast points are returned empty to the Missouri river at a charge to the shipper of \$105 per car (formerly \$95), and that mileage is not paid by the Southern Pacific Company on returning upright tank cars when empty. The upright tank cars are generally used in Pacific coast business, the two tanks holding together an average of about 3,800 gallons. The space between the tanks, which is from 18 to 20 feet in length, may be utilized to some extent for the carriage of other commodities when the tanks are full, and may be freely used for such other freight when the tanks are empty. These cars weigh about 28,000 lbs. The weight of longitudinal tank cars averages about 21,000 lbs. and they vary in capacity from 3,000 to about 6,000 gallons. A few cars hold less than 3,000 gallons. Box cars weigh about 26,500 lbs., and in those of the larger class it is possible to load one hundred barrels of oil. It is not, however, regarded safe to place a double tier of barreled oil in a box car. The usual and prescribed minimum carload of oil in barrels is 60 barrels, and the minimum tank-car load is its shell capacity. The charges for tank transportation are limited to the oil carried, while charges on barreled oil include the package as part of the shipment paid for. The tariff rates are the same per hundred pounds for both modes of conveyance. About 80 per cent. of all the petroleum sent to the Pacific coast points is shipped in tin cans packed in wooden cases weighing 80 lbs. each, including the case. Three-fourths of complainant's shipments to the Pacific coast have been in cases, and his entire business to these points has been about 40 carloads a year, of which ten carloads was in barrels. Complainant's barrels cost him about \$1.05 each. Second-hand petroleum barrels sell in some parts of the south for 75 cents a piece, and for about a dollar on the Pacific coast; but the price of barrels depends largely upon the locality where the refiner or shipper is obliged to purchase and the oil dealer is able to sell them.

#### 4. The weight per gallon of petroleum and its products

ranges from  $5\frac{3}{4}$  pounds for naphtha to  $7\frac{1}{2}$  pounds for lubricating oil. While the average weight of these various products is not satisfactorily shown, the actual weight of refined petroleum oil is not less than 6.5 pounds per gallon and does not appear to exceed 6.7 pounds. It was not claimed by defendants that refined petroleum oil weighs less than 6.5 pounds per gallon. All these commodities when shipped in tank cars are estimated by the defendants at 6.3 pounds per gallon, which they claim to be their actual average weight. This estimate may be correct on the assumption that an equal amount of each product is shipped; but taking into account the very large excess of refined oil over all the other products combined, the estimate is clearly below the actual weight of the merchandise carried. The volume of shipments actually weighing less than 6.5 pounds is so small in comparison with the total petroleum tonnage as to be practically insignificant. When shipment is made in barrels, the defendants estimate the total weight of oil and barrel at 400 pounds. The average capacity of an oil barrel is 50 gallons; filled with refined petroleum it weighs 400 to 410 pounds. The weight of complainant's refined oil is 6.7 pounds per gallon, and of his barrels 70 pounds, or a total of 405 pounds. Under this method of estimating weights, the shipper in tank cars can send refined oil at less total cost for the same weight of freight than the shipper in barrels between the same points. The estimated weight of tank oil is from two to four tenths pounds per gallon less than actual weight, while barrel shipments are under estimated only to the extent that actual weight exceeds 400 pounds. The advantage resulting to the tank shipper from this system of estimates is more clearly shown by illustration. Suppose two carload shipments are made from Cincinnati to San Francisco, one in barrels and one in a tank car, each *estimated* to weigh 24,000 pounds. At the present rate of  $87\frac{1}{2}$  cents per hundred pounds the charges on each shipment would be \$210. Take first the case which would put the barrel shipper most nearly on equal terms with the tank shipper, viz., where the tank oil actually weighs only 6.5 pounds per gallon and the barrel of oil actually weighs 410 pounds. In that case the barrel ship-

per, reckoning 60 barrels to the carload, pays \$210 for the transportation of 24,600 pounds of freight. But the tank shipper for the same money gets a carload carried, estimated at 24,000 pounds on the basis of 6.3 pounds per gallon, which in fact weighs 24,761.9 pounds, or a difference of 161.9 pounds in his favor. Taking the other extreme, viz., where the tank oil actually weighs 6.7 pounds per gallon, and the barrel of oil weighs only 400 pounds, and the barrel shipper pays \$210 for the transportation of 24,000 pounds of freight, while the tank shipper gets 25,523.8 pounds carried for the same money, a difference in favor of the latter of 1,523.8 pounds. Or, to state the result in another form, the tank shipper gets an advantage which in one case amounts to \$1.41 per car and in the other case to \$13.33 per car. If we take 6.6 pounds as the actual weight of tank oil and 405 pounds as the actual weight of a barrel of oil, the additional freight carried for the tank shipper amounts to 842.8 pounds, equivalent to \$7.37 per car. These figures indicate the nature and extent of the discrimination against the shipper in barrels which results solely from this method of estimating weights, without taking into account any allowance for loss by leakage or evaporation. Upon any basis of calculation permitted by the evidence, the tank shipper secures an advantage which, while inconsiderable upon a single shipment, is nevertheless so certain and constant as to be substantial and important in the aggregate. When these cases were heard, the Southern Pacific Company charged on actual weight of oil, if ascertainable, otherwise according to an estimate of 6.5 pounds per gallon prescribed in Circular No. 13, Transcontinental Association, effective May 10, 1889. Supplement 3-D to West Bound Transcontinental Tariff. No. 22, of October 1, 1889, put the weight, when it could not be ascertained, at 6.3 pounds, but Circular No. 13 was not abrogated in terms until the issuance of Circular No. 21, effective March 22, 1890. Supplement No. 3-H to West Bound Tariff No. 22, effective June 4, 1890, says nothing about actual weight of tank shipments, but provides that the weight per gallon shall be computed at 6.3 pounds. The present regulation is to the same effect. The oil tariff of the

Louisville & Nashville road also prescribed 6.3 pounds per gallon for tank shipments without any reference to actual weight.

5. The defendants require a tank carload to be the full capacity of the tank, but permit it to be billed "at not more than 42 gallons less than the actual capacity of the tank." This deduction of 42 gallons is allowed irrespective of the capacity of the tank car. There are several organized tank line companies and a number of refining companies owning tank cars, the capacities of which are published in gauge books. Most of the eastern lines have these books, and are supplied with notices of changes in their capacities which from time to time occur. For shipments west of the Missouri River a joint tank line circular, issued by the Western Freight and Trans-Missouri Freight Associations was at the time of the hearing, and a succeeding one is now, in use by roads named thereon. The Southern Pacific Company is not mentioned in these circulars. The gauge books show the numbers of each car, the full capacity of the tank in gallons, and the billing capacity both in gallons and pounds. The difference between the full and the billing capacity is 42 gallons. The joint tank line circular above mentioned only gives the number of the car, and the billing capacity in gallons and pounds. This allowance of 42 gallons per car is made mainly on account of leakage and evaporation. At one time a deduction of 62 gallons was made. No allowance is made for leakage and evaporation from shipments in barrels. The average leakage from a barrel of refined oil is about half a gallon. Tank cars have a tower or dome at the top which is not taken into account when the capacity is measured. These cars cannot with safety be entirely filled with oil in a condensed state and tightly covered, on account of the danger of explosion from expansion of the oil. Barrels cannot be completely filled with such oil for the same reason.

6. Petroleum shipped in tanks to Pacific coast points is not shown to have been reconsigned or reshipped in barrels in any considerable quantities, being usually sold locally in

the larger towns where tank stations are situated. Tank stations are also located at various junction or central points in the south. It does not appear that rates on tank shipments to these stations added to rates on barrel consignments therefrom to local points were less than rates on barrel oil direct to such local points. Tank car rates in southern territory are only in effect to points where facilities for handling oil in tanks have been provided. Complainant has no tank stations. These stations are large iron tanks erected for the reception of oil from tank cars; the oil is drawn from the tank station into barrels, cases or wagon tanks used for local delivery. The Louisville & Nashville road has allowed the Standard Oil Co. of Kentucky to put 40 or 50 cylindrical tanks on its own trucks, so that the shipper and carrier own each part of these cars, but what arrangement exists between them in regard to the carriage or use of these tanks is not shown.

#### RATES OVER THE LOUISVILLE & NASHVILLE ROAD.

7. The main line of this road consists of the following divisions: The Cincinnati division, from Cincinnati to Louisville; the Main Stem division, from Louisville to Nashville; the Nashville and Decatur division, from Nashville to Decatur; the South and North Alabama division, from Decatur to Montgomery; the Mobile and Montgomery division, from Montgomery to Mobile; and the Mobile and New Orleans division, from Mobile to New Orleans. Various branch roads connect with the main line at different points. One of these is called the Memphis branch, and extends from Memphis Junction on the main line to Memphis.

8. There are no petroleum refineries south of the Ohio river except at Louisville, and where shipments of oil originate at points south of Louisville, the oil must have been previously shipped to these points. The total shipments of coal oil and petroleum south over the road during the year ending June 30, 1889, were:



From Cincinnati division (presumably from Cincinnati) . . . . .	19,562 tons
From Main Stem division (presumably from Louisville) . . . . .	19,436 tons
Total . . . . .	<u>38,998 tons</u>

Not all, but probably a very large proportion, of this tonnage went south over the main line and Memphis branch. The shipments of oil for that year north and south from points on defendant's line between the Ohio River and the Gulf, and from points on the Memphis branch, were, stating only shipments north from Main Stem points, as follows :

Divisions.	North. Tons.	South. Tons.
Main Stem . . . . .	422	
Nashville & Decatur . . . . .	80	807
South & North Alabama . . . . .	597	187
Mobile & Montgomery . . . . .	183	147
Mobile & New Orleans . . . . .	452	8
Memphis branch . . . . .	692	105
Totals . . . . .	<u>2,426</u>	<u>1,254</u>

9. The approximate value of refined petroleum is about 6 cents per gallon. Crude cotton-seed oil is worth about 28 cents per gallon, while the price of the refined article ranges according to quality from about 35 to 50 cents per gallon. Both cotton-seed oil and petroleum are carried barreled in box cars and in bulk in tank cars ; and cars in which petroleum has been taken south may and do have cotton-seed oil and turpentine for loading north. This road's total tonnage north is considerably in excess of its total tonnage south, but the total northbound movement of cotton-seed oil, turpentine and petroleum is considerably less in volume than the southbound shipments of petroleum. The rates on southbound shipments of refined petroleum from Cincinnati and Louisville are in many instances very much higher, some are over 60 per cent. higher than rates on northbound shipments of cotton-seed oil from the same points to Cincinnati and Louisville ; but petroleum rates from the Ohio River to Memphis



and Mobile are about the same as rates on cotton-seed oil shipped in the contrary direction between these points, and the tendency of the evidence is to show that cotton-seed oil rates from Mobile and Memphis are kept at a low figure by water competition.

10. Liquor in barrels is classed much lower than petroleum in the regular tariffs of this defendant, although it is worth many times as much as petroleum. Cotton-seed oil is classified by this defendant as 5th class, not released, and 6th class released. Petroleum released is in the 6th class. There is, however, a special commodity tariff for cotton-seed oil which makes rates much lower than the class rates. The rates on petroleum are also complicated by a special commodity tariff on that product between certain points. The following tables show rates and distances from Cincinnati and Louisville :

I. From Cincinnati, O., *via* Main Line.

To Gallatin, Tenn.....	269 miles,	34½	cts. per 100 lbs.
“ Nashville, Tenn.....	295	“ 20½	“ “
“ Columbia, Tenn.....	342	“ 35½	“ “
“ Pulaski, Tenn.....	375	“ 48½	“ “
“ Decatur, Ala.....	417	“ 34½	“ “
“ Cullman, Ala.....	450	“ 51½	“ “
“ Birmingham, Ala.....	504	“ 37½	“ “
“ Calera, Ala.....	537	“ 54½	“ “
“ Montgomery, Ala.....	600	“ 37½	“ “
“ Greenville, Ala.....	644	“ 56½	“ “
“ Mobile, Ala.....	780	“ 22½	“ “
“ New Orleans, La.....	921	“ 22½	“ “

II. From Louisville, Ky., *via* Main Line.

To Gallatin, Tenn.....	159 miles,	30	cts. per 100 lbs.
“ Nashville, Tenn.....	185	“ 16	“ “
“ Columbia, Tenn.....	232	“ 31	“ “
“ Pulaski, Tenn.....	265	“ 44	“ “
“ Decatur, Ala.....	307	“ 30	“ “
“ Cullman, Ala.....	340	“ 47	“ “

To Birmingham, Ala.....	394 miles,	33	cts. per 100 lbs.
“ Calera, Ala.....	427	“ 50	“ “
“ Montgomery, Ala.....	490	“ 33	“ “
“ Greenville, Ala.....	534	“ 52	“ “
“ Mobile, Ala.....	670	“ 18	“ “
“ New Orleans, La.....	811	“ 18	“ “

III. From Cincinnati, O., *via* Memphis branch.

To Clarksville, Tenn.....	287 miles,	20½	cts. per 100 lbs.
“ Paris, Tenn.....	356	“ 33½	“ “
“ Milan, Tenn.....	394	“ 32½	“ “
“ Memphis, Tenn.....	487	“ 16½	“ “

IV. From Louisville, Ky., *via* Memphis Branch.

To Clarksville, Tenn.....	177 miles,	16	cts. per 100 lbs.
“ Paris, Tenn.....	246	“ 29	“ “
“ Milan, Tenn.....	284	“ 28	“ “
“ Memphis, Tenn.....	377	“ 12	“ “

These tables show greater charges for shorter than for longer distances over the same line in the same direction and widely disproportionate rates according to the distances therein named. Rates on oil sent south from Baltimore are the same as from Cleveland. Louisville shipments take rates 13 cents less than Cleveland rates, and 4½ cents less than those in effect from Cincinnati. Rates from Baltimore to Decatur, Birmingham and Montgomery, for instance, were 46 cents per 100 lbs.; from Louisville 33 cents, and from Cincinnati 37½ cents. The Decatur rate has been changed and from Louisville, it is now 30 cents. From Louisville to Gallatin, 159 miles, the 6th class rate of 30 cents is charged, but the rate to Nashville from Louisville, 185 miles, although one cent higher than the rate named for 6th class goods to that point, is a special commodity rate, and is only 16 cents. The rate from Nashville back to Gallatin, 26 miles, is 15 cents. To Columbia and Pulaski the charge is made by adding to the commodity rate to Nashville the 6th class rate from Nashville to Columbia and Pulaski respectively, that is to say, 16 cents Louisville to Nashville, 185 miles, and 15 cents additional to Columbia, 47 miles from Nashville, and 28 cents additional

to Pulaski, 80 miles from Nashville. The rate to Decatur, 307 miles, is as above stated, 30 cents, and is 14 cents lower than the charge to Pulaski, which is 42 miles nearer Louisville; it is 1 cent lower than the Columbia charge, and the same as the rate to Gallatin. The rate to Cullman, 47 cents, is based on the 30 cent rate to Decatur plus the local rate of 17 cents to Cullman. A charge of 33 cents is made to both Birmingham and Montgomery, which are distant from Louisville 394 and 490 miles respectively. Calera, 33 miles farther than Birmingham, and 63 miles nearer than Montgomery, is given a rate of 50 cents, 17 cents higher than the 33 cent rate to those points. Greenville, 534 miles from Louisville, is charged 52 cents. This is based on the very low rate of 18 cents to Mobile plus the local rate of 34 cents for a haul of 136 miles back to Greenville. The Greenville rate of 52 cents is 19 cents in excess of the 33 cent rate to Montgomery, and the distance from Montgomery to Greenville is only 44 miles. The rates to Mobile, 570 miles, and New Orleans, 811 miles, are each 18 cents, being 12 cents less than the rate for 159 miles to Gallatin, and are in excess of only one of the rates named from Louisville to main line points, that is, the 16 cent rate to Nashville. Rates to Decatur, Birmingham, Montgomery, Mobile and New Orleans are commodity, not class rates. As to Memphis branch points the rate for 177 miles is four cents greater than the one for 377 miles to Memphis, and the rate to Paris, 246 miles, is one cent higher than the rate to Milan, 284 miles, while each is nearly  $2\frac{1}{2}$  times the Memphis rate. As above stated, Cincinnati rates to these main and branch line points are  $4\frac{1}{2}$  cents greater than those from Louisville.

11. The average rate per ton per mile received by this road for the year ending June 30, 1889, was .998 cents, nearly one cent, and its total average cost was .595 cents. The average cost of "conducting transportation" is stated to be .327 cents. The average rates per ton per mile charged on petroleum from Louisville to the points named in the above tables are :

To	Miles.	Rate per ton per mile in cents.
New Orleans.....	811	0.443
Mobile.....	670	0.537
Greenville.....	534	1.947
Montgomery.....	490	1.347
Calera.....	427	2.342
Birmingham.....	394	1.675
Decatur.....	307	1.954
Pulaski.....	265	3.320
Columbia.....	232	2.672
Nashville.....	185	1.730
Gallatin.....	159	3.773
Memphis.....	377	0.637
Milan.....	284	1.972
Paris.....	246	2.358
Clarksville.....	177	1.808

12. Wherever rates from Louisville or other points of shipment to local points are based on the rate to a tank station point plus rates therefrom to such local points, the tank shipper is able to ship to the tank station and reship in barrels from that point at an advantage over the barrel shipper direct to the local points, and if such local points be so situate that one is nearer the point of original shipment than the tank station and another is beyond the tank station point, the tank shipper can at such advantage ship to and reship from the tank station in both directions. The tank shipper is enabled to do this because more pounds of freight can be sent at the same total charge by the tank method than by the barrel method from a common point of shipment to the same destination, and the extent of the advantage depends upon the actual weight of the oil itself, the actual total weight of the oil and barrel and the amount of leakage, evaporation, etc., from the respective shipments.

13. The Louisville & Nashville Railroad Company presented no distinct proof on this hearing in justification of rates enforced on its lines which were alleged to be in conflict with the fourth section of the statute.

## CONCLUSIONS.

The foregoing facts require little discussion. They are believed to be conservative deductions from the evidence and incapable of serious dispute. Whatever injustice results from the methods and practices thus found to exist must convict the defendants of unlawful conduct. The rule of equality is violated when rates are so adjusted between tank and barrel shipments that substantial advantage is secured by those employing the former mode for the transportation of their merchandise. It matters little by what device or arrangement this relative unfairness is accomplished, it must receive condemnation proportionate to the injury which it occasions. The tank shipper may rightfully enjoy the benefits of greater economy and convenience, for these are incident to his business and independent of the carrier's control; but upon no just principle of transportation can he be lawfully favored in the rates themselves. In a contest between different and competing methods of distributing an article of general consumption, every consideration of justice should induce the railroads to stand in a neutral attitude. If absolute impartiality cannot be perfectly maintained, the disadvantage ought not to be on the side of the weaker contestant. Especially is this so when the carrier, failing to provide the special equipment presumably best adapted to a particular traffic, uses the special vehicle of shippers who are able to furnish them, while their less fortunate rivals are compelled to depend upon its ordinary facilities. In such a case, where a species of partnership exists between the carrier and those shippers who supply the vehicle in which their merchandise is most conveniently transported, the rights of competing shippers whose circumstances are not so favorable in this respect should be constantly and effectually protected. In the absence of adequate equipment freely afforded to all patrons alike, the railroads should so adjust rates between those who can and those who cannot furnish their own conveyance that, *in the relative charges to each*, there shall be no discrimination against the dependent shipper.

The defendants have adopted a system of estimating

weights for the purpose of fixing the charges on petroleum products which in practical application seems clearly less equitable than the requirements of the statute. In assuming 400 pounds for a barrel of oil and 6.3 pounds for a gallon of tank oil, there appears to be a constant and appreciable advantage to the shipper in tanks. The discrimination is not flagrant, but it is actual and material. However unimportant it may be regarded in a single shipment, it amounts to a substantial figure on the aggregate tonnage. *So far as this method* enables the tank shipper to secure the carriage of more pounds of freight for the same money than the shipper in barrels, it subjects the latter to undue and unlawful prejudice. The difference between actual and estimated weights is less on shipments made in barrels than on shipments made in tanks, and the extent of this variation in each case measures the resulting injustice. To concede that 6.3 pounds per gallon is the actual average weight of the various petroleum products carried by the defendants, does not avoid the criticism nor dispel the suspicion of unfairness. It is the principal one of these products, the well-known "refined oil" of commerce, and the relative rates enforced for its transportation, whether in tank or in barrel shipments, which is the precise subject of comparison. The complainant's grievance relates to a definite commodity, of standard quality and value, and there is some foundation for his complaint unless *that article* is carried at rates relatively just and equal as between different shippers employing different modes of shipment. To assume that an ordinary barrel of this commodity weighs 400 pounds, and that a gallon of it weighs only 6.3 pounds, is to use constructive or hypothetical weights so much out of proportion to actual weights that positive and measurable preference is constantly granted to the shipper in tanks. The result condemns the system.

In the original case against the Louisville & Nashville road, the Commission pointedly disapproved the methods of estimating weights which were then investigated, and directed that charges for oil transportation be thereafter based on the actual weight of shipments. The substantial changes in its tariffs which this carrier thereupon introduced were doubt-

less designed to meet the requirements of that decision; but they have not fully accomplished that purpose nor entirely removed the grounds of complaint. We are not so strenuous for technical compliance with the order then made as for the adoption and enforcement of a system of charges in conformity with its spirit and the equitable rule of the statute. In any case where actual weights cannot be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of conveyance. The system now complained of is not free from this objection and therefore comes short of a full and complete discharge of the carrier's duty. It was asserted by the Southern Pacific, and virtually conceded by complainant, that the charges of that carrier were in all cases based on actual weights. If that practice is still continued, no order made herein bearing upon this subject will be understood as a reflection upon that company.

The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank is wholly indefensible. It is a patent and provoking discrimination for which no rational excuse is suggested by any defendant. The losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier. To make a fixed deduction from the assumed weight of oil contained in a tank is equivalent to a cash rebate to its owner; and the fact that the amount thus abated is inconsiderable in a single instance in nowise relieves it of its obnoxious character.

The general scheme of petroleum charges on the Louisville & Nashville system presents many anomalous features, and is difficult of intelligent explanation. Not only are the south-bound tariffs to many of the smaller towns apparently excessive, but the disproportion between rates and distances

is frequently so extreme that the inference of unlawful conduct can hardly be avoided. The most cursory examination of the findings upon this subject discloses numerous instances of disparity in rates to neighboring localities which create a presumption of extortion in exacting the higher charges. We do not overlook the fact that this defendant encounters the competition of water carriage at various points upon its lines, and the decisive influence of that competition is entitled to much consideration, but the difference is so great between rates to places favored with water communication and those often less distant, which are dependent upon this railroad alone, that much of the competitive business must be conducted at a loss, or that which is uncontrolled by competition must yield extravagant profits. If the transcontinental lines are willing to carry refined oil to the Pacific coast for  $87\frac{1}{2}$  cents per hundred pounds, and this defendant can afford to carry the same article from Louisville to New Orleans, 811 miles, for 18 cents a hundred, what excuse can there be for a charge of 52 cents to Greenville, a haul of only 534 miles?

The conditions of water competition may furnish justification for rates to intermediate inland points somewhat higher than the railroad must accept in order to participate in the business to the more remote locality which is favored with water carriage, but when the charges for the shorter distance are three times those of the longer, the disparity is absurd and inexcusable. The lower figure must be unrenumerative or the higher must be extortionate.

In this connection the rates of the Louisville & Nashville road on such articles as cotton-seed oil, turpentine and liquor in barrels are not without marked significance. In respect to the methods and cost of transportation, these commodities have a notable resemblance to petroleum products, and the cheapest of them is several times more valuable than illuminating oil. Independent of the fact that the aggregate north-bound business of this carrier is considerably in excess of its total tonnage in the opposite direction, we find that petroleum rates from Cincinnati and Louisville to various interior and non-competitive points reached by its lines greatly exceed the rates on cotton-seed oil from the same



points to those cities respectively. Notwithstanding the comparatively low value of refined petroleum, the amount exacted for its transportation is, in some instances, sixty per cent. greater than the sum accepted for carrying cotton-seed oil between the same stations. It is impossible to reconcile such inconsistent charges. The cotton-seed oil rate, in the cases referred to, is not forced upon the railroad and must, therefore, be presumed to be remunerative; but if the lower rate for the higher priced article is reasonable to the carrier, how can the higher rate for the lower priced article be reasonable to the shipper?

There is no occasion to cite other examples or prolong this opinion with further argument. The rate sheets now under review contain numerous inequalities and disclose ample grounds for unfavorable comment. The petroleum tariff of this defendant is so unequally constructed that more or less injustice must be the necessary consequence of its enforcement. Not only do the charges to many localities, whose carrying trade is monopolized by this corporation, seem to impose unreasonable burdens upon shippers and consumers, but the adjustment of rates between tank and barrel shipments operates apparently to the general advantage of the former mode of conveyance. We discover no circumstance connected with the transportation of this commodity which tends to the relative benefit of barrel shippers, while in several particulars the rates and methods complained of favor their business rivals.

There is much less difficulty in determining that the relative rates to these two classes of shippers offend the law of equality, than in prescribing specific measures for their correction. While the investigation convinces us that the charge of partiality is well founded, the record is lacking in evidence necessary for more definite and detailed requirements. In the respect to which we have called attention, we hold that the petroleum rates of this defendant are unlawful; but, for want of sufficient data, we do not undertake to point out the particular modifications and reductions which would satisfy the demands of justice.

In its decision in No. 218, above referred to, the Commis-

sion declined to decide the question whether water competition at various gulf and river towns in the southwest justified lower terminal rates from northern shipping points than the intermediate localities receive, holding that its information concerning the extent and influence of that competition was insufficient for a satisfactory conclusion. Re-affirming that view of the evidence, we seem equally precluded from passing upon the same question in its more limited application to the tariffs of this defendant. The water advantages of several important places reached by its lines have an undoubted bearing upon the rates at which it can compete for the business to those destinations, but whether that circumstance is so controlling as to justify lower charges for the longer haul we are not now prepared to determine. The final decision of that issue must await a fuller disclosure of material facts, and more minute and exhaustive inquiry. Believing, also, that the maximum rates which may be lawfully charged to intervening places are necessarily involved with the rates affected by water competition at terminal points, we feel unable to prescribe the measure of disparity which might rightfully be permitted on the lines of this defendant, even assuming that the conditions surrounding its traffic, authorize a departure from the general rule of the statute. The relation between through and local rates is so intimate that in most cases neither can be fairly fixed without reference to the other.

Without extending these observations we repeat our conviction that the schedule of rates enforced by the Louisville & Nashville road is not in conformity with just principles of tariff construction, and should receive thorough and systematic revision. We are impressed with the inconsistency and unfairness which characterize many of its charges, and believe that substantial modifications can be effected in its local rates, to the greater satisfaction of its patrons, and without serious diminution of its earnings. Upon this general statement of views which are firmly entertained, and without attempting at this time to prescribe definite reductions or require particular changes in existing rates, we venture to believe that the managers of this extensive system of rail-

roads will voluntarily readjust their tariff on refined petroleum, so that practically equal treatment shall result to competing shippers using different modes of conveyance, fair and reasonable charges be established to interior and non-competitive points, and the rate-sheets governing the transportation of this important commodity be "considerately made with a view to relative justice."

It remains only to formulate the directions indicated by the facts ascertained and conclusions arrived at in this investigation.

The orders of the Commission in these proceedings are as follows :

*First.* In numbers 184 and 185 the question of the reasonableness of the through rate on petroleum products to the Pacific coast from points east of the 97th meridian is not now decided, and those cases are re-opened for further evidence and argument upon that issue by either of the parties thereto, or such further inquiry as the Commission may see fit to institute upon its own motion.

*Second.* In number 194 the question whether water competition at various points reached by the Louisville & Nashville road justifies a departure from the general requirement of the 4th section of the Act, is not now decided, and that case is re-opened for further evidence and argument upon that issue by either party thereto, or such further inquiry as the Commission may see fit to institute upon its own motion.

*Third.* The question of the free carriage of barrels in the transportation of petroleum products is not now decided in these proceedings, and all the cases are re-opened for further evidence and argument upon that issue by either of the parties thereto, or such further inquiry as the Commission may see fit to institute upon its own motion.

*Fourth.* The method adopted by the defendants in these proceedings for estimating the weight of petroleum shipments, when not actually and correctly ascertained, by which a barrel of refined oil is assumed to weigh 400 pounds, and

a gallon of tank oil is assumed to weigh 6.3 pounds, is hereby determined and declared to be an unlawful discrimination against the barrel shipper, and to subject such shipper to undue and unreasonable prejudice and disadvantage as against the shipper in tanks. The defendants in these cases, and each of them, are hereby directed to base their charges on petroleum products upon the actual weight of shipments, whether in tanks or barrels; and for all cases where actual weights cannot be ascertained without great inconvenience, they are directed, upon notice of this decision, to adopt and employ such a rule or method of estimating weights as shall practically operate to secure to the shipper in barrels, for the same aggregate sum as may be paid by the shipper in tanks in any case, the transportation between the same points of an equal amount or weight of freight paid for. To what extent the weights now assumed shall be made relatively more favorable to the barrel shipper, in order to equalize the charges to both classes of shippers, the Commission does not now determine; and the cases will be held open for such further and more specific directions in that regard as may hereafter appear to be necessary. This direction will not, however, be understood as authorizing charges on barrels when tanks are carried free, that question being expressly reserved for further consideration.

*Fifth.* The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank for alleged leakage and evaporation, is hereby determined and declared to be an unlawful discrimination against the shipper in barrels, and to subject the latter to undue and unreasonable prejudice and disadvantage as against the former. The defendants in these cases who engage in that practice are hereby required to cease and desist therefrom upon notice of this decision; and such defendants are further required to thereafter make no deduction or allowance of that character to shippers in tanks, unless a corresponding and equivalent concession be made to shippers in barrels.

*Sixth.* The Louisville & Nashville Railroad Company is

hereby directed, upon notice of this decision, to revise and correct its charges on petroleum shipments to many of the interior and local points upon its lines, and to make such reductions and modifications therein as will remove the gross disproportions and inequalities now found to exist, and which are adjudged and declared to be unjust and unlawful discriminations against the localities paying the higher rates. And the case against that company will be held open for further investigation of its petroleum charges to such intermediate and non-competitive points, and for such further and more specific directions in relation thereto as may appear to be required.

*Seventh.* In so far as these proceedings, or either of them, are re-opened or held open for the purposes above mentioned, the pleadings therein, if deemed necessary, may be amended upon the application of any party thereto, and on such notice as the Commission may direct.

In view of the disposition thus made of these proceedings, and their relation to certain questions raised in number 218, it may not be unsuitable to intimate that an application to re-open the latter case, for the purpose of investigating the petroleum rates to intermediate points on the southwestern and transcontinental lines, will be favorably entertained.

**E. M. RAWORTH v. THE NORTHERN PACIFIC RAILROAD COMPANY; THE OREGON RAILWAY & NAVIGATION COMPANY; THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY; THE UNION PACIFIC RAILWAY COMPANY, AND THE SOUTHERN PACIFIC COMPANY.**

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Complaint filed September 25, 1889.—Answers filed October 14 to November 2, 1889.—Hearing at Fargo, N. D., May 23, 1891.—Briefs filed November 24 to December 22, 1891.—Decided April 13, 1892.

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1. Carriers alleging justification of a departure from the "long and short haul" rule of the statute, must in their answers to complaints clearly advise complainants of the facts and circumstances relied on as constituting such justification.
2. There is no competition by rail over the Canadian Pacific Railway or by water around Cape Horn, that justifies a departure from the "long and short haul" rule of the statute in the transportation of refined sugar from San Francisco to Fargo and through Fargo to St. Paul.
3. The "long and short haul rule" of the statute was intended to maintain and promote, and not to destroy or neutralize, natural commercial advantages resulting from location, and competition at St. Paul with sugar from the East refined in New York, although necessitating the prevailing low rates to St. Paul on sugar from the West refined at San Francisco, does not justify the greater charge on the latter to Fargo than to St. Paul.
4. Section 2 of the "Act to regulate commerce," forbidding unjust discrimination, applies even in cases where a departure from the "long and short haul rule" of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul, does not justify a disparity in rates so great as to result in unjust discrimination.
5. The facts, that the rates to the longer distance point cannot be raised without a loss of the traffic involved, and that the rates to both the long distance point and the short distance point are not unreasonable in themselves, do not justify a disparity in such rates resulting in unjust discrimination as against the shorter distance point.
6. The Northern Pacific Railroad Company is not exempt under its charter from the authority to regulate rates conferred on the Commission by the Act to Regulate Commerce.

*Benton & Amidon and Stone, Newman & Resser*, for complainant.

*James McNaught, John C. Bullitt, Jr., and W. F. Ball*, for Northern Pacific Railroad Company.

*M. D. Grover*, for St. Paul, Minneapolis & Manitoba Railway Company.

*John M. Thurston*, for Union Pacific Railway Company.

*Charles H. Tweed*, for Southern Pacific Company.

*W. W. Cotton*, for Oregon Railway & Navigation Company.

#### REPORT AND OPINION OF THE COMMISSION.

*VEAZEY, Commissioner :*

The complaint in this case is made by E. M. Raworth, a wholesale grocer at Fargo, North Dakota, and alleges that defendants, The Northern Pacific Railroad Company and The Oregon Railway & Navigation Company, are jointly engaged as common carriers in the transportation of passengers and property, partly by railroad and partly by water, from San Francisco, California, to said city of Fargo and to St. Paul, Minnesota; that the other defendants, The St. Paul, Minneapolis & Manitoba Railway Company, The Union Pacific Railway Company and The Southern Pacific Company, (designated in the complaint the "Southern Pacific Railroad Company"), are engaged in such transportation wholly by *railroad* between said points; and that all the defendants are, as such common carriers, subject to the "Act to regulate commerce."

It is further alleged, that Fargo is on the main through lines of the Northern Pacific and the St. Paul, Minneapolis & Manitoba Companies from San Francisco to St. Paul, and about 275 miles nearer to San Francisco than St. Paul; that "all property shipped from San Francisco to St. Paul over said last named roads passes through Fargo; that all the circumstances and conditions of transportation between San Francisco and St. Paul and Fargo are identically the same except as to distance;" and that the defendants charge and receive and for more than thirty days before the making of the complaint had charged and received, 32 cents per hundred

pounds more for the transportation of sugar in car-load lots to Fargo than to St. Paul—the rate to Fargo being 97 cents per hundred and that to St. Paul being 65 cents.

These alleged facts if proven, constitute a violation of section 4 of the “Act to regulate commerce,” which provides “that it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included in the longer distance.” The complainant asks for an order commanding the defendants to cease and desist from this alleged violation of the law, “and for such other and further order as the Commission may deem necessary in the premises.”

All of the defendants have filed answers. That of the Oregon Railway & Navigation Company is to the effect that on January 1, 1887, it leased to the Oregon Short Line Railway Company all its property, including railway and steamboat lines; that said last named company subsequently, July 27, 1889, became consolidated with other railroad companies, forming a new company, known as the Oregon Short Line & Utah Northern Railway Company, and thereupon all the interest of the Oregon Short Line Railway Company under said lease was transferred to said new company; and that since the making of said lease all the said property of respondent has been in possession of and operated by, either the Oregon Short Line Railway Company or the Oregon Short Line & Utah Northern Railway Company, and respondent has not been engaged in the transportation of passengers and property or in the making of rates over its railway and steamboat lines as alleged in the complaint.

The Southern Pacific Company denies that it makes or had for thirty days prior to the complaint made the transportation charges from San Francisco to Fargo and St. Paul, respectively, as alleged in the complaint, and avers that at one time a joint through rate of 65 cents per hundred pounds on sugar in car-load lots was made over its railroad lines in



conjunction with the connecting railroad lines of its co-defendants, forming an *all rail* line, but that, a differential of 5 cents per hundred pounds having been at the same time allowed the part steamer competing lines *via* Portland, Oregon, and Tacoma, Washington, which resulted in a joint through rate of 60 cents per hundred pounds by said part steamer lines, they "have taken all the sugar transportation traffic" and the respondent has been debarred from participating therein, has withdrawn its agreement to said through *all rail* rate, and for more than a year prior to the filing of the complaint has transported no sugar over its railroad for Fargo or St. Paul.

The answers of the Southern Pacific Company, the Union Pacific Railway Company, the Northern Pacific Railroad Company, and the St. Paul, Minneapolis & Manitoba Railway Company all deny the allegations of the complaint as to the similarity of circumstances and conditions attending the transportation of sugars by the defendants from San Francisco to Fargo and to St. Paul, respectively. The St. Paul, Minneapolis & Manitoba Railway Company alleges, that those circumstances and conditions "are totally dissimilar for reasons of public notoriety including the geography of the country," and the Union Pacific Railway Company, that the lower rate to St. Paul than to Fargo "is forced upon it and its connections by actual competition of controlling force in respect to traffic important in amount beyond the operation of the Act to regulate commerce." The latter company further alleges that the lowest rate on sugar to Fargo should be the St. Paul rate plus the local rate back to Fargo, and that the rate to Fargo is not unreasonable in itself.

All the allegations of the complaint except that as to the similarity of the circumstances and conditions attending the transportation of sugar from San Francisco to Fargo and to St. Paul, are substantially admitted, and the issue presented is, whether the greater charge for the shorter haul to Fargo than for the longer haul through Fargo to St. Paul is a violation of the "long and short haul" rule laid down in the 4th section of the Act to regulate commerce.

Before passing from the consideration of the pleadings,

we deem it our duty to call attention to the fact that the averments in the answers of the defendants of justification for their departure from the "long and shorthaul" rule of the statute amount simply to general denials of the alleged substantial similarity of the circumstances and conditions attending the transportation in question or to general allegations that such circumstances and conditions are substantially dissimilar. The particular grounds of justification upon which the defendants rely are not specifically set forth. A departure from the statutory rule being admitted, the burden is upon the carrier to justify such departure. The facts constituting the justification and upon which the carrier acted in assuming the responsibility of departing from the rule are peculiarly within his knowledge. The complainant may or may not have such knowledge; the presumption, in view of his complaint, is that he has not. As the carrier is entitled to be clearly advised in the complaint of the charges to which he must make answer, so in a case of alleged justification of a departure from the rule of the statute in question, the complainant is entitled to as clear a statement of the particular facts claimed to constitute such justification. The answers of the defendants are defective in this respect, and had exception thereto been taken by the complainant it would have been our duty to sustain it. *Junod v. C. & N. W. R'y Co.*, 47 Fed. Rep. 290; *Osborne v. C. & N. W. R'y Co.*, 48 Fed. Rep. 49.

#### FACTS AND CONCLUSIONS.

There are three routes from San Francisco through Fargo to St. Paul. One of these is by water, or rail over the Southern Pacific, to Portland, Oregon, thence over the Northern Pacific road through Fargo to St. Paul. (The Oregon Railway & Navigation Company's line runs from Portland to Wallula, Washington, where it forms a junction with the Northern Pacific. This road, as set up in its answer, is operated under a lease by the Oregon Short Line & Utah Northern Railway Company, which latter company appears now to be a part of the Union Pacific system). Another

route is over the Southern Pacific to Ogden, Utah Territory; thence over the Union Pacific to Helena, Montana, and thence over the St. Paul, Minneapolis & Manitoba railroad (now known as the "Great Northern") through Fargo to St. Paul. A third route is by water to Vancouver, thence by the Canadian Pacific road to Winnipeg, thence by a branch of the St. Paul, Minneapolis & Manitoba (Great Northern) to Fargo and thence by the main line of that road to St. Paul. The second of the above routes is *all rail* and the other two are part rail and part water. The carload rate from San Francisco to St. Paul on refined sugar by the all-rail line is 65 cents per hundred pounds, but a differential of 5 cents is allowed in favor of the part rail and part water lines, and their rate between those points is 60 cents per hundred pounds. The rate to Fargo is the rate to St. Paul plus the local back of 32 cents per hundred pounds, and is therefore 92 cents by the part rail and part water lines, and 97 cents by the all-rail line. The haul through Fargo to St. Paul over the lines of defendants is about 240 miles longer than that to Fargo.

It appears from the testimony that the Southern Pacific Company was not a party to the rates complained of during the time covered by the complaint, and that no shipments of sugar aggregating a carload at any one time have been made from points on the lines of that road to St. Paul or Fargo between August 1, 1889, and April 1, 1891. It was admitted by the complainants at the hearing that the St. Paul, Minneapolis & Manitoba Railway Company leased its entire line to the "Great Northern" in February, 1890, and that up to the date of the filing of the complaint (September 25, 1889), the Manitoba Company was bringing sugar to the complainant at Fargo by way of the Canadian Pacific Railway at 60 cents per hundred pounds.

In cases of complaints for violations of the fourth section of the Act to regulate commerce the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions attending the long and short hauls respec-

tively are substantially dissimilar. *Re Louisville & Nashville R. R. Co.*, 1 I. C. C. Rep. 31; 1 Inters. Com. Rep. 278. The only brief filed in behalf of the defendants is that of the Northern Pacific Railroad Company, in which it is claimed that the low rates to St. Paul of 65 cents per hundred pounds in carloads by the all-rail line, and 60 cents by the rail and water lines, are forced on that company by (1) "the price of sugar in New York, Philadelphia, Boston and other eastern cities, and the rates charged for transporting the same from such eastern points, *via* water and rail, to St. Paul;" (2) "water competition by way of Cape Horn; and (3) rail competition by way of the Canadian Pacific." These may be considered the three leading grounds of justification for their departure from the "long and short haul" rule of the statute disclosed in the brief of the defendants and the evidence adduced at the hearing.

As to rail competition by way of the Canadian Pacific, the traffic manager of the Northern Pacific testified that the "*controlling cause*" which compelled the latter road to accept the low rate to the Missouri River was competition from the east, and that to hold the business it would have to be carried at the same rates if the Canadian Pacific did not exist. The Canadian Pacific is, as before stated, a part of one of the three routes or lines from San Francisco through Fargo to St. Paul. The carriers, including the Canadian Pacific, which constitute these lines, are members of the Trans-Continental Association, and the rates complained of are established by agreement between them. Both the through line of the Northern Pacific and that of the St. Paul, Minneapolis & Manitoba Company, with its Canadian Pacific connection, pass through Fargo, and it appears that the rate by the latter route was the same, 60 cents per hundred pounds, both to Fargo and St. Paul, until the Northern Pacific line adopted the present increased rate to Fargo. The raising of the rate to Fargo was first by the Northern Pacific line and was followed by the Canadian Pacific line some weeks afterward. If the Canadian Pacific were in active competition with the lines of defendants passing through Fargo, that competition, it would seem, would be equally as effective in reducing rates

at Fargo as at St. Paul, as the line of which the Canadian Pacific forms a part also runs through Fargo and meets the lines of defendants first at that point. In this respect there would then be no dissimilarity of circumstances and conditions between the two places.

The claim of justification for the greater charge to Fargo on the ground of rail competition *via* the Canadian Pacific is not sustained by the facts in this case, as above appears.

In reference to water competition by way of Cape Horn, it is contended that the facts in this case bring it within the decision of this Commission in the case of *Lehmann, Higginson & Co. v. The Southern Pacific Co. et al.*, 4 I. C. C. Rep. 1; 3 Inters. Com. Rep. 80. The two cases are, however, clearly distinguishable, and their facts differ in several essential particulars. In the *first* place, the *Lehmann, Higginson & Co.* case raised only the question of unjust discrimination in rates on sugar as between Humboldt and Kansas City, and did not involve a violation of the "long and short haul" rule of the fourth section of the Act to regulate commerce. Humboldt, the shorter distance point, was not located on the line of the through route from San Francisco to Kansas City, but on a lateral connecting line, and it was held that, "where a reduced rate is made at the terminus of a through route, under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a *disadvantage of situation entailing some additional expense*, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route, is not unjust discrimination." In the *second* place, it was found in the *Lehmann, Higginson & Co.* case that the rates complained of resulted in no undue advantage to the Kansas City dealer over the Humboldt dealer at Humboldt or in its distributing territory, and *this is one of the grounds upon which those rates were sustained*. In the present case the testimony of the complainant shows that the rates on sugar from San Francisco to Fargo had been for a long period the same as those to St. Paul, 60 cents and 65 cents per hundred pounds, and that during the continuance of

these rates to Fargo the complainant was enabled to ship and deal in San Francisco sugar, but that on the advance of the rates to Fargo, he was compelled to discontinue shipments from San Francisco; that he has since gotten his sugars (sugar being necessary in his business), from New York, the rate from which point to Fargo is from 67 cents to 74 cents per hundred pounds, but can make no profit on it; and that he is the only wholesale grocer at Fargo and is prevented from competing in the sale of sugars in the territory covered by his business with the St. Paul merchant whose trade covers the same territory. The above mentioned rates from New York to Fargo, like those from San Francisco to Fargo, are made up of the through rate to St. Paul plus the 32 cents local to Fargo. The complainant, therefore, in order to supply his customers with sugar, whether it comes from the east or the west, must pay the rate to St. Paul plus the local from St. Paul to Fargo plus the local from Fargo to the place of delivery to the customer; while the St. Paul merchant pays only the rate to St. Paul plus the single local rate from St. Paul to the same place. The sum of the two locals paid by the Fargo merchant is materially greater than the single local paid by the St. Paul merchant. The differences in favor of St. Paul, at points for the most part farther from St. Paul than Fargo, range according to the evidence, from 7 cents to 17 cents per hundred pounds. In the *third* place, it was shown in the Lehmann, Higginson & Co. case, that cars coming from the west to Humboldt to be unloaded had to be hauled empty to the Missouri River to be loaded and go west again. The testimony in the case under consideration tends to show that the reverse of this is the case in reference to Fargo, as shipments of sugar from the Pacific coast are made in the fall of the year when the roads are engaged in moving the large surplus wheat crop of North Dakota, and any car brought to Fargo at that season loaded with sugar would not have to be hauled empty to eastern points, but would be at once required for transporting wheat. In these three material particulars the case at bar differs from the case of Lehmann, Higginson & Co. The decision in that case was based on these and other grounds besides water competition around Cape Horn,

and the conclusion reached was, that such water competition was "sufficient, *in connection with the other considerations to which reference had been made*, even if alone it might not be adequate, to furnish a lawful reason *for the lower charge to the Missouri River*." As before stated, the "long and short haul" rule of the statute was not involved in this case and it is not authority for the proposition that water competition by way of Cape Horn is sufficient to authorize a departure from that rule on hauls between the Pacific Coast and Missouri River terminals. On the contrary, the Commission abstained from holding that such competition *in itself* justified a greater charge to a town not located on the through route but reached over a lateral connecting road. It may be also noted that Commissioner Morrison, while concurring in the conclusion reached in the Lehmann, Higginson & Co. case, filed an opinion in which he says: "There is, in my opinion, no such thing as water competition between the Pacific Coast and Kansas City in the carrying of refined or unrefined sugars. . . . The dissimilarity in the circumstances which justifies the greater charge for the shorter distance results from the fact that Humboldt, the shorter distance point, is off the through and direct lines of any route from San Francisco to Kansas City. The expense of maintaining separate equipment and operating short branch roads or lines adds considerably to the cost of carriage." 4 I. C. C. Rep. 30; 3 Inters. Com. Rep. 92.

Sugar is not produced on the Pacific Coast in sufficient quantity for shipment. That which is refined in San Francisco is brought principally from the Sandwich Islands. There are two large refineries in San Francisco and about \$6,000,000 is invested there in the refining business. The sugar brought to San Francisco and handled by these refineries in the year 1890 amounted to from 140,000 to 150,000 tons, and of this between 30,000 and 40,000 tons found a market on the Missouri River and at St. Paul and Minneapolis; the balance was marketed on the Pacific slope and in the mountain districts between the Missouri River and the Pacific Ocean. The complainant testified that whenever sugars have been shipped from San Francisco to St. Paul and other like



eastern points, it was because of a surplus in San Francisco. No *refined* sugar has been shipped around the Horn to the Atlantic seaboard.

Mr. Hannaford, the traffic manager of the Northern Pacific Railroad, who had been connected with its freight department for 19 years, testified that his *understanding* was that at all times when the rate from San Francisco to Missouri River points has gone above 65 cents per hundred pounds, the refiners have discontinued shipping over land and have sent the raw product by ocean to New York for refining, but that he had no personal knowledge on the subject. He also stated that he had no knowledge of any course of trade or regular traffic in sugar around the Horn. Richard Gray, the general manager of the Southern Pacific system, testified that he had been connected with traffic matters on the Pacific coast in connection with the Trans-Continental lines for about 19 years and was familiar with the refinement and transportation of sugars on that coast. Having stated that the competition by water on sugar from San Francisco to New York and Philadelphia was "actual and tangible," he was asked by a member of the Commission what amount of sugar that involved, and in reply said, that during 1888 there were 11,000 tons shipped around the Horn from San Francisco. This shipment was of raw sugar, and, although he had been familiar with sugar transportation on the Pacific coast for 19 years, was the only shipment by water, around the Horn that he could name. He stated that was the only shipment he knew of. This witness having further said that when the sugar rate was raised above 60 or 65 cents per cwt., shipments over defendants' lines stopped, was asked what then became of the sugar. He replied that it went "by other carriers," and mentioned as an instance a shipment in 1887 of several thousand barrels by way of Vancouver on the Canadian Pacific line. He gave no instance of sugar going by way of Cape Horn on account of an advance in rates.

J. C. Stubbs, general traffic manager of the Southern Pacific Company, as a witness in the case of Lehmann, Higginson & Co., being called on to state the extent of water competition in shipments of sugar from the Pacific coast, gave this same



shipment above mentioned of 11,000 tons. He stated that the American Refinery at San Francisco, desiring for some reason to ship raw sugar to New Orleans and possibly to St. Louis, asked him for a rate first of 40 cents per hundred pounds, and then of 50 cents, both which being refused, they *chartered* four vessels and shipped 11,000 tons around the Horn. Although the rates asked for do not appear to have been subsequently granted, no shipment of sugar around the Cape has been made since that of 11,000 tons in 1888. The inference is that it did not pay. It will be noted that the vessels employed in this shipment had to be chartered; at no time does it appear that vessels have been regularly engaged in this business and when desired they have to be procured by special charter. The rates on this shipment were from \$3.70 to \$4.00 per ton, or from 18½ to 20 cents per hundred pounds. The witness Gray testified that the average rate on freight from the Islands to San Francisco was \$2.00 per ton or 10 cents per hundred pounds, making a total of about \$6.00 per ton or 30 cents per hundred pounds, from the Islands *via* San Francisco to New York, and that this was a less rate than "could be got as a permanent thing between the Islands direct and New York." The witnesses Gray and Hannaford differed as to whether the raw sugar would go direct from the Islands to New York or by way of San Francisco. In refining raw sugar there is a loss of 10 per cent. At the rate of 30 cents per hundred pounds on raw sugar from the Islands *via* San Francisco to New York, the charge on the amount of raw sugar necessary to yield 100 pounds of refined sugar will be a fraction over 33 cents. This added to the rates on refined sugar from New York to St. Paul (42 cents by all rail line and 35 cents by the "Soo" route), will amount to from 68 to 75 cents. It is also stated that in carriage by water sugar is usually damaged from 5 to 10 per cent—another item of expense or loss in transporting sugar around the Horn. The voyage from San Francisco to New York averages 110 days, nearly a third of a year, while the time by rail is from 10 to 12 days. The time from the Islands to San Francisco is not given. The sugar shipped west to Missouri river points from New York is refined in New York from raw sugar mainly brought

from Cuba and the other West Indian Islands in the Atlantic. This sugar being so much nearer to New York than that refined at San Francisco, the shipment of the latter by ocean to New York in competition with the former would not seem likely to ever prove a permanently paying business, unless the quality of the West Indian sugar or its cost of production was such as to counterbalance its great geographical advantage. It is to be borne in mind, as stated at the outset, that the burden is on the defendants to show that the alleged competition by water is such as to justify a departure from the rule of the statute. This would seem to be a matter, if such were in fact the case, susceptible of positive and convincing proof. The evidence in this case in connection with that in the case of Lehmann, Higginson & Co. (all of which we have considered), does not in our opinion show such water competition as justifies the greater charge for the shorter haul to Fargo than for the longer haul through Fargo to St. Paul. It does not appear that there is either actual or even probable competition of controlling force. If a clear case of competition not strictly speaking *actual*, but having a *potential* existence, had been shown, we are not prepared to say it would have been insufficient to authorize a departure from the statutory rule. Competition has a potential existence in the sense in which we wish to be here understood, where the means of such competition exist and all the conditions are such that it is morally certain an advance in rates by a carrier will result in developing competition of controlling force. If the facts make out a clear case of this kind, it would seem unreasonable to require the carrier to go further and demonstrate, by an actual advance in rates resulting in a loss for the time being of the traffic involved, that such advance will so result. In this case the means of competition around Cape Horn—a water-way, vessels and capital—may be said to exist; but the conditions as to duration of voyage, damage to cargo, and above all competition with sugar possessing an insuperable advantage in location, are such as to render competition of any permanence and controlling force highly improbable, if not practically impossible.

It is to be noted that the counsel for the Northern Pacific

Railroad Company does not claim in the argument filed in behalf of that road, that the low rates from San Francisco to St. Paul are forced by water competition by way of Cape Horn and rail competition by way of the Canadian Pacific alone, but, as before set forth, he contends that they are necessary because of "the price of sugar in New York, Philadelphia, Boston and other eastern cities, and the rates charged for transporting the same from such eastern points *via* water and rail to St. Paul." This proposition is sustained by the evidence, and, as stated by the traffic manager of the Northern Pacific, competition in the markets from the east is the "controlling cause" of the acceptance of the low rates on sugar to St. Paul from the west. This being so, the question is presented whether this competition constitutes such a state of dissimilar circumstances and conditions as will justify the greater charge to Fargo. We cannot so hold. The sugar in New York and other eastern cities, the price of which is referred to, comes to those cities in its raw state for the most part from the Atlantic islands. The competition with the defendants meet at Missouri river points is not competition in transportation by water or rail from San Francisco to those points but is the competition of the raw sugar of the Atlantic with that of the Pacific. The distance by the shortest all-rail line from New York to St. Paul is 1,373 miles and from San Francisco to St. Paul 2,301 miles. The Atlantic sugar refined at New York has the advantage at Missouri river points of the shorter haul and the further fact is present that the trunk lines over which it is transported are enabled by the greater amount of their traffic and for other reasons to charge lower rates on traffic in general than the Trans-Continental lines over which the Pacific sugar refined at San Francisco is transported. On the other hand, the sugar refined at San Francisco has the advantage over that refined at New York when points some distance west of Missouri river points are reached and from thence on to the Pacific coast. In other words each has the advantage in what may be termed its own natural territory. These natural commercial advantages resulting from *location* were intended to be maintained and promoted, and not destroyed or neutralized, by the "long and short haul" rule of the statute. The

case of *James & Mayer Buggy Co. v. Cincinnati, New Orleans & Texas Pacific R. R. Co. et al*, (4 I. C. C. Rep. 744,) 3 Inters. Com. Rep. 682, is directly in point on the question under consideration. In that case, the defendants sought to justify the lower rates on buggies from Cincinnati to Augusta, the longer haul, than to Social Circle, the shorter haul, because of the competition between Cincinnati and eastern cities for the buggy and carriage trade of the Augusta market, in reaching which the *eastern cities have the advantage of rail and water transportation while Cincinnati products must go by rail*. On this the Commission say: "Independent of the rate to shorter distance points on their line defendants insist they may lawfully make such lower rate to the longer distance point as will prevent eastern manufacturers more advantageously located from taking the Augusta market from Cincinnati manufacturers. . . . If the contention of the defendants is justified by the statute, and they can avail themselves of its exceptional provisions and charge more for the shorter distance for the purpose of equalizing commercial conditions and adjusting trade relations between the cities of Cincinnati and Baltimore in the Augusta market, the same thing may be done to place Cincinnati carriage makers on an equal footing with those of Augusta in the Augusta market, or to relieve any city from any disadvantage in markets of other cities, or to deprive all cities or places of production of any advantage resulting from their location. Such an interpretation would make the 4th section of the Act practically inoperative, and with such a license in rate making carriers might give advantage to or build or destroy the carriage or other business of any city or locality."

The evidence shows that if the existing rates on sugar from San Francisco to St. Paul were raised, shipments of that commodity from San Francisco to St. Paul would cease. It further appears that the greater charge to Fargo yields only about 6 mills per ton per mile, that this is lower than the charge on any other commodity over the Trans-Continental roads, and is not in itself unjust or unreasonable in view of the cost of building these roads, the character and condition of the country which they traverse, their current expenses,

the amount of traffic they transport and other matters to be weighed in passing upon the reasonableness of their rates. These rates are lower, also, per ton per mile than the rates from the Atlantic seaboard on sugar going west over the trunk lines, which latter lines by reason of the greater volume of their traffic are able to carry at lower rates than the Trans-Continental lines. But, admitting for argument's sake that a departure from the long and short haul rule has been shown to be authorized in this case, the facts that the low rates to St. Paul are necessary in order to hold the business, and that the higher rates to Fargo, the shorter distance point, are not in themselves unjust or unreasonable, do not justify a disparity in rates between the two cities which will result in unjust discrimination. Section 2 of the Interstate Commerce Law, forbidding unjust discrimination, applies even where the exceptional conditions are shown to exist which authorize the greater charge for the shorter haul. When such right is established it must be so exercised as not to work unjust preference between individuals, *localities* or commodities. *Re Louisville & Nashville R. R. Co.*, 1 I. C. C. Rep. 30; 1 Inters. Com. Rep. 278. The facts heretofore recited show that the higher rate to Fargo than to St. Paul has caused the complainant at Fargo to stop shipping sugar from San Francisco altogether, and enabled the St. Paul dealer to undersell him in territory immediately around Fargo and much more distant from St. Paul than from Fargo. Conceding, we repeat, that the right to make the greater charge for the shorter haul has been established, a disparity in rates so great as to produce such a result cannot be sanctioned. In this connection it may be noted that the method of making rates to Fargo and other points for a considerable distance west of the eastern termini of the Trans-Continental roads, by adding to the through rate to the terminal the local back to such points, is what is known as the "basing point system." The natural effect, if not purpose, of this system was to build up "trade centres," or distributing points, at the expense of surrounding towns. It prevailed extensively before the Act to regulate commerce was passed, and it is believed that its injustice attracted the attention of

Congress and led to the incorporation of the short-haul clause as the leading feature of the Act. *Re Tariffs and Classifications of A. & W. P. R. R. Co. et al.*, 3 I. C. C. Rep. 47; 2 Inters. Com. Rep. 461; *Re Louisville & Nashville R. R. Co.*, 1 I. C. C. Rep. 84, 85; 1 Inters. Com. Rep. 278. The defendants claim that if the same rate is given to Fargo as to St. Paul the roads will lose the local charges back from St. Paul on the sugar which in that event will go to Fargo, and that these local charges constitute the main profit which they derive from this business. It thus appears that the high rates imposed on Fargo, as compared with those to St. Paul, are for the purpose of forcing sugar to St. Paul that the roads may have the benefit of the greater profit which will result from its distribution from that point. The benefit thus accruing to the roads is at the expense of Fargo, and it is scarcely necessary to say that such a method on the part of carriers of advancing their interests is contrary to both the spirit and letter of the law.

For a considerable period—stated by the complainant as two years—prior to the advance in rates to Fargo complained of in this case, the same rates (60 and 65 cents) had been charged to Fargo as to St. Paul. The advance in the rates to Fargo, according to the witness for the roads, was made, not because of any material injury which had resulted from the equality of rates to St. Paul and Fargo, but because of complaints from other localities of the lower rates to Fargo than to such other localities. The only complaint mentioned is said to have been from Lincoln, Nebraska, and the nature of that complaint is not fully set forth. The volume of traffic going west from Missouri river points is greater than that coming from the west to those points. Hence there is a preponderance of empty cars coming east from the Pacific coast. This enables the roads to carry sugar east at a lower rate than they otherwise could. As it appears that cars coming from San Francisco to Fargo loaded with sugar, after being unloaded there are not carried empty to Missouri river points to be reloaded for the trip west again, but are at once needed for moving the wheat crop of North Dakota east, the cost of

carrying the sugar from San Francisco to Fargo ought to be, if anything, less than that of carrying it to St. Paul. The testimony shows that, while the rates from San Francisco on sugar both to Fargo and St. Paul are not excessive, but comparatively low, they yet pay something above the costs of transportation, and the roads desire to retain the traffic. In cases of competition like that from the east encountered at Missouri river points by the defendants in the transportation of sugar from San Francisco, it may be impossible to make the traffic subject to such competition pay its equal proportion of the whole cost, including fixed charges, to which the carrier is subject. If it can, under such circumstances, be made to pay anything toward the cost, above what the taking of it would add to the expense, the surplus would be profit. "A railroad ought not to neglect any traffic of a kind that will increase its receipts more than its expenses; and long-haul traffic which can only be had on these terms may sometimes be taken without wronging any one, when, to carry all traffic, or even the major part of it, at the like rates, would be simply ruinous." *Re Louisville & Nashville R. R. Co.*, 1 I. C. C. Rep. 79; 1 Inters. Com. Rep. 278.

Our conclusion is that the "controlling cause" of the necessary low rates on refined sugar over the lines of defendants from San Francisco to St. Paul is the competition from the east of sugar refined at New York; that these rates to St. Paul would be forced on the defendants by that competition even if the Canadian Pacific road and the water-way around Cape Horn did not exist; that while the low rates to St. Paul are so rendered necessary, that is no justification under the law as construed by this Commission of the higher rates to Fargo, the shorter distance point; and that, in order to make the rates to St. Paul and Fargo, respectively, conform to the "long and short haul" rule of the statute and prevent unjust discrimination against Fargo, they should be at least as low to Fargo as to St. Paul.

In the printed brief filed in behalf of the Northern Pacific Railroad Company, it is alleged that the charter of that company "vests in its board of directors a contract rate making



power free from legislative or other control, except as to rates on military, postal and other government transportation." There is no discussion in this case of the question raised by this allegation either on the part of the railroad company or the complainant, but an elaborate argument in support of the company's position has been filed by its counsel in the case now pending before us of *The Merchants' Union of Spokane Falls v. The Northern Pacific Railroad Company et al.* The Northern Pacific Company was chartered by Act of Congress of July 2, 1864 (13 Stat. at L. 365), and the sections of its charter mainly relied on by the company are the following:

"SECTION 11. And be it further enacted, That said Northern Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States, for postal, military, naval and all other government service, and also *subject to such regulations as Congress may impose restricting the charges for such government transportation.*"

"SEC. 13. And be it further enacted, That the directors of said company shall make an annual report of their proceedings and expenditures, verified by the affidavits of the president and at least six of the directors, and they shall, *from time to time fix, determine, and regulate the fares, tolls and charges to be received and paid for the transportation of persons and property on said road or any part thereof.*"

It is contended by counsel for the railroad company that these sections are to be construed *in pari materia*; that so construed the former constitutes an express exception to the latter, and being such, excludes all others, under the rule, *expressio unius est exclusio alterius*; and that by the two sections Congress "intended to place the *unrestricted* right in the board of directors to determine rates of compensation, subject only to one limitation, to wit: right of Congress to restrict charges on government transportation." By "unrestricted right," we gather from the argument, is meant a right free from control or restriction by Congress or otherwise.

Section 20 of the company's charter is as follows:

"SEC. 20. And be it further enacted, That the better *to accomplish the object of this Act, namely, to promote the public interest and welfare* by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particu-



larly in time of war) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said Northern Pacific Railroad Company, *add to, alter, amend or repeal* this Act."

It is manifest *in limine* that the proposition above stated based on sections 11 and 13 of the charter, is without foundation, if the reservation by Congress in section 20 of the right of amendment and repeal applies to the authority to determine rates given in section 13. It is claimed on the part of the railroad company that this reservation does not so apply, but "is limited to such amendments as aid or further the construction of the road, or the keeping of the same in order, and such as tend to secure the use of the same to the government for postal, military and other governmental purposes." By an analysis of section 20 it will be seen that the purpose of the reservation is expressly stated to be "*the better to accomplish the object of the Act,*" and the object is declared to be, first, the general one of promoting "the public interests and welfare," and second, the special one of securing the use of the road at all times for governmental purposes. The construction of the road and telegraph line and keeping them in working order are only the *means* to the ends declared to be had in view in reserving the right of amendment and repeal. The interpretation contended for substitutes the means for the end and requires the statute to read as follows: "That the better to accomplish the object of this Act, namely, . . . the construction of said road and telegraph line, and the keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefit of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend or repeal this Act." This is to limit the object of the Act to the construction and maintenance of the road and its use by the government, and to entirely ignore the vastly larger and enduring interests of the general public as shippers and passengers. The "public interests and welfare" involved outside of the governmental use of the road, relate to the transporta-

tion over it of persons and property of citizens in general and, it is needless to say, are vitally affected by the rates to be charged for such transportation. "The United States," in the charter under consideration, "made a magnificent grant to this company of lands equal in quantity to forty or fifty thousand square miles, an area as large as an average State of the Union." *Northern Pacific R. R. Co. v. Traill County*, 115 U. S. 610, 29 L. ed. 277. The power to make this grant was claimed to be derived from what is known as the "general welfare" clause of the Constitution. Congress seems to have been mindful of this and of the extent to which the public domain had been made to contribute, in reserving to itself the right of amendment and repeal of the charter for the "promotion of the public interests and welfare" not only as represented by the government, but also as involved in the benefit to otherwise accrue from this great highway to its citizens in general.

The comprehensiveness of the language employed is to be noted—the right reserved is not only to "add to, alter and amend," but also to "*repeal*" *the entire Act*. A practical construction of the reservation has been given by Congress in an act subsequently passed. Section 4 of the charter provided for the issuance to the company, on the completion of each twenty-five consecutive miles of the road, of patents for lands covered by the grant; "confirming to the company the right and title to said lands, situated opposite to and coterminous with, said completed section of said road." In 1870, when making appropriations for the survey of the lands within the limits of the grant, Congress added this proviso: "That before any land granted to said company by the United States shall be conveyed to any party entitled thereto under any of the acts incorporating or relating to said company, there shall first be paid into the Treasury of the United States the cost of surveying, selecting and conveying the same by the said company or party in interest." 16 Stat. at L. 305. This was a material alteration or amendment of that portion of the 4th section of the charter above referred to, and on its face its object was, by retaining the legal title in the government, to secure the payment of the cost of making the sur-

veys necessary to the location and ascertainment of the lands of the grant. Counsel for the company insist that this amendment was also intended "to exempt said land from taxation pending the construction of the road and until payment by the company of the surveying and listing fees mentioned in said proviso;" that this exemption obviated the necessity of raising a large amount of money, and enabled the company to complete the road and prepare it for government use earlier than it could but for such exemption; and hence that the amendment was within the objects specified in section 20 of the charter as construed by him. It is true, similar words in the Union Pacific charter had, prior to this amendment been construed by the Supreme Court of the United States as exempting lands granted to that road from taxation until the payment of said fees (*Kansas Pac. R. Co. v. Prescott*, 83 U. S. 16 Wall. 603, 21 L. ed. 373; *Union Pac. R. Co. v. McShane*, 89 U. S. 22 Wall. 444, 22 L. ed. 747), and this amendment itself has been construed by said court as having that effect (*Northern Pac. R. R. Co. v. Traill County*, 115 U. S. 600, 29 L. ed. 477); but its main, if not only, purpose must be held to be that which is clearly expressed on its face. In the case last cited the Supreme Court says: "It" (the government) "thought proper to require of the grantee the payment of the costs of making the surveys necessary to the location and ascertainment of those lands. To secure the payment of those expenses it decided to retain the legal title in its own hands until they were paid." 115 U. S. 610. Referring to the decision of the court of Minnesota in the case of *Cass County v. Morrison*, 28 Minn. 257, in which it was held that, because the requirement to pay these costs was made in 1870, six years after the original grant, it was void as an unconstitutional exercise of power by Congress, the Supreme Court further says: "But we think that the clause" (sec. 20 of the charter) "authorizing Congress to 'add to, alter, amend or repeal the Act of 1864,' *clearly* conferred this power on Congress, especially when exercised, as in this instance, before the company had built a mile of road or earned an acre of land, or in any other manner secured an equitable right to the lands." It may be

remarked that the question being considered by the court was whether the power to make such an amendment was conferred by section 20 of the company's charter, and not whether it would be operative when made on rights in property which had become vested under the charter prior to the amendment.

In the Act of Congress of July 1, 1862 (12 Stat. at L. 489), chartering the Union Pacific Railroad Company, the reservation of the right of amendment and repeal is identical with section 20 of the charter of the Northern Pacific Railroad Company. In the Act of July 2, 1864, amending the above Act of July 1, 1862, there is nothing but the simple words "that Congress may at any time alter, amend and repeal this Act." The Supreme Court, in construing these reservations in the "Sinking Fund Cases" (99 U. S. 720, 25 L. ed. 496), said: "It is unnecessary to decide what power Congress would have had over the charter if the right of amendment had not been reserved; for, as we think, that reservation has been made. . . . Taking both acts together, and giving the *explanatory statements in that of 1862*" (*Sec. 20 of charter of Nor. Pac. R. R. Co.*) "*all the effect it can be entitled to, we are of the opinion that Congress not only retains, but has given special notice of its intention to retain full and complete power to make such alterations and amendments of the charter as come within the just scope of legislative power.*"

As said by the Supreme Court above, we deem it unnecessary in view of the reservation in section 20 of the right of amendment, to "decide what power Congress would have had over the charter if the right of amendment had not been reserved." We are of opinion, however, that without such reservation the clause of the charter under consideration giving the right to fix and determine rates would have been subject to the *legitimate* exercise by Congress of its constitutional power to regulate commerce. The exercise of this power *within lawful bounds* is not only a right, but, where public interests are involved, a duty. The "power of regulation is a power of government, continuing in its nature."

116 U. S. 325. If it can be irrevocably bargained away by one Congress as to a particular corporation engaged in the business of common carriage, so as to bind not only that Congress but all future Congresses it may be so bargained away as to all or such a number of corporations as to virtually nullify the constitutional grant.

It being clear that Congress under its reservation of the right of amendment, if not without such reservation, has, as stated by the Supreme Court above, "full and complete power to make such alterations and amendments of the charter as come within the just scope of legislative power," the question remaining to be determined is, whether the "Act to regulate commerce" as applied to the rate-making authority given the defendant in section 13 of its charter, comes within "the just scope of legislative power." In connection with the statement above quoted of the extent of the power reserved, the court proceed to say: "That this power has a limit, no one can doubt. All agree that it cannot be used to take away property acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made. . . . The United States cannot, any more than a State, interfere with private rights, *except for legitimate governmental purposes*. They (the United States) are not included within the constitutional prohibition which prevents states from passing laws impairing the obligation of contracts, but equally with the states are prohibited from depriving persons or corporations of property without due process of law." 99 U. S. 718-720. It is held, however, that Congress may exercise the reserved power of alteration and amendment of a charter "to *protect the rights of the public* and of the corporation," (Holyoke Co. v. Lyman, 82 U. S. 15 Wall. 519, 21 L. ed. 133), and that such reserved power "places under legislative control all rights, privileges and immunities derived by the charter *directly* from the State." Tomlinson v. Jessup, 82 U. S. 15 Wall. 459, 21 L. ed. 204. It is deemed unnecessary to make further citations of authorities on the question of the limitations on, and extent of a reserved power of amend-

ment of a charter. It seems clear that this power is one over the charter itself, and not over rights which have vested or property acquired under it prior to amendment. It is equally clear that it may be exercised to protect and promote the interests of the public, the corporators and the corporation, due regard being had for the rights of each. The question then is: Would the Act to regulate commerce, if applied to the Northern Pacific Railroad Company, injuriously affect, impair or destroy rights which had vested under the charter of that company prior to the passage of said Act, or is it a lawful exercise for the promotion of the public interests and with due regard to the rights of said company and those claiming under its charter, of the power to regulate commerce, and within the just scope of the legislative power of amendment reserved in its said charter? The gravamen of the complaint of the Northern Pacific Railroad Company against the application to it of the Act to regulate commerce is, in the language of its counsel, that without "freedom in rate-making power and right of *discrimination against locality*" (which are claimed to be necessary), "it could not have sold its bonds, secured the money with which to construct its road, or maintained and operated its road and complied with its obligations;" and that its "securities were purchased by persons acting in good faith, relying upon the plain and unambiguous language of the charter." The answer to this, in the first place, is, that by section 20 of the charter, Congress, in the language of the Supreme Court heretofore quoted, "not only retained, but *gave special notice* of its intention to retain, full and complete power to make such alterations and amendments of the charter as come within the just scope of legislative power."

The company and purchasers of its bonds and securities are chargeable with this notice, and cannot claim to be injured or that their contract rights are impaired by any amendment of the charter within the "just scope of legislative power." The reservation of this power was a term of the charter or contract, and the holders of the company's securities do not occupy the status of purchasers for value without notice. In the second place, the power of regulation of rates conferred

on this Commission by the Interstate Commerce Act not only is, in our opinion, clearly within the just scope of the power of amendment reserved in the charter, but if properly exercised, must in the long run result in benefit rather than injury to the company and the holders of its securities. The requirements of the Act to regulate commerce pertinent to our present inquiry, briefly stated, are: (1) That rates of transportation shall be *reasonable* and *just*; (2) that rates charged different persons shall be the same for a "like and contemporaneous service in the transportation of a like kind of traffic under *substantially similar circumstances and conditions*;" (3) that there shall be given no *undue* or *unreasonable* preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic," and that such person, etc., shall not be subjected to "any *undue* or *unreasonable* prejudice or disadvantage in any respect whatsoever;" and (4) that no greater charge in the aggregate shall be made "for the transportation of passengers or of like kind of property, *under substantially similar circumstances and conditions*, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance." The first requirement relates to the reasonableness and justice of rates in themselves, and the last three to different forms of unjust discrimination. The defendant asserts that "freedom in rate-making power and right of discrimination against locality" are necessary to it, and that Congress intended to confer these rights in its charter. The Interstate Commerce Law, in the requirement that rates must be reasonable, was only declaratory of the common law, and "freedom in rate-making power," before the passage of that Act, was subject to the condition that rates must be reasonable. 116 U. S. bot. p. 343. "A grant in general terms of authority to fix rates is not a renunciation of the right of legislative control so as to secure reasonable rates. Such a grant evidences merely a purpose to confer a power to exact compensation which shall be just and reasonable." *Stone v. N. J. & C. R. R. Co.*, 62 Miss. 646. In justice to the defendant the idea cannot be entertained that the "freedom in rate-making power" which



it claims, is freedom to make unjust and unreasonable rates. Unless, however, this be its claim, it cannot say that the first requirement above stated of the Interstate Commerce Law is an abridgment of its freedom in rate making. In reference to the claim of the "right of discrimination against locality," the statute does not forbid *any* discrimination, but, on the contrary, recognizes a right of discrimination under substantially dissimilar circumstances and conditions. The charging of one person more than another for a "like and contemporaneous service in the transportation of a like kind of traffic," and the greater charge "for a shorter than a longer distance over the same line in the same direction, the shorter being included within the longer distance," are only forbidden under "circumstances and conditions substantially similar;" and preferences and advantages and prejudices and disadvantages are only made unlawful when they are "undue and unreasonable." In a word, it is only "*unjust*" discrimination which is prohibited. In the case of *Fitzgerald v. Grand Trunk R. Co.*, 3 Inters. Com. Rep. p. 635, the Supreme Court of Vermont say: "At common law, common carriers were held to be persons who exercised their calling for the public good, upon equal terms and with the same facilities to all their customers. They could not lawfully exercise their calling by granting advantages to one customer which they denied to another, but were held to the duty of serving all alike. Their calling is one public in its nature, and the common law exacted of them a strict impartiality in their dealings with the public" (citing *Messenger v. Pennsylvania R. Co.*, 36 N. J. L. 407; *Audenried v. Philadelphia & R. R. Co.*, 68 Pa. 370; *McDuffee v. Portland & R. R. Co.*, 52 N. H. 430; *New England Exp. Co. v. Maine Cent. R. Co.*, 57 Me. 188; *Pierce on Railroads*, 498). In the four requirements to which we have referred as pertinent to the question under consideration, the Interstate Commerce Law only enjoins what is right and forbids what is wrong, and it seems self-evident that these regulations are within the "just scope of the legislative power" of amendment reserved in the charter for the "promotion of the public interests and welfare." We are, as before stated, of the opinion that they would have been



lawfully applicable to defendant as a legitimate exercise of the power to regulate commerce even without such reservation. We do not understand the defendant as claiming the right under its charter to make *unreasonable* rates or to practice *unjust* discrimination. Unless such is the claim, it has no ground of complaint against the Act to regulate commerce. If that law be improperly administered by this Commission, a defendant carrier is amply protected by those of its provisions which, in cases of failure on the part of such carrier to comply with our orders, requires a resort for their enforcement to the courts, where such carrier may have a re-investigation and adjudication of the questions in issue.

The "Dartmouth College Case" and subsequent cases in line with it, cited by the defendant, have no application where the right of amendment and repeal are reserved in the charter. 17 U. S. 4 Wheat. 518, 4 L. ed. 629. Such right when reserved being a term of the contract, its exercise within just and lawful limits cannot be an impairment of the obligation of the contract.

In support of the claim of exemption from the operation of the Interstate Commerce Law, the counsel also lays down these propositions: "The Interstate Act is a general law without a repealing clause. Defendant's charter is a private and special act. Repeals by implication are not favored. A general law is never construed as repealing a private and special statute, unless there is irreconcilable conflict."

It is true repeals by implication are not favored, and a general later law does not abrogate an earlier special one by *mere implication*. It is the duty by the courts, if possible, to so construe two seemingly repugnant statutes that each may stand and have a field of operation; but in case of "irreconcilable conflict" this is impossible, and it then becomes the duty of the courts to sustain the later expression of the legislative will. Potter's Dwarries on Stat., 156; Endlich on Stat., 210. If the position of the counsel for the railway company, that section 13 of its charter "vests in its board of directors an unrestricted rate-making power," except as to rates on military, postal and other government transportation, be cor-

rect, then said section is in "irreconcilable conflict" with the power to regulate rates given this Commission in the Act to regulate commerce. That Act provides that it "shall apply to any common carrier or carriers" wholly by rail or partly by rail and partly by water engaged in interstate commerce. No exception is made out of the class of carriers covered by the Act. It is an act designed to regulate by one general system the entire subject matter covered by it; and such acts are, as a general rule, held to supersede local and special acts on the same subject. *Endlich on Stat.*, 231; *Norris v. Crocker*, 54 U. S. 13 How. 429, 14 L. ed. 210. A subsequent statute making a different provision on the same subject, is to be construed as an implied repeal of the former if the latter act be incompatible with the former. *Potter's Dwarris on Stat., etc.*, 156. In such cases it is a question of legislative intent. As we have shown, there is no reason why the Northern Pacific Railway Company should be exempted from the operation of the general law, and, therefore, the presumption is that Congress did not intend such exemption. The application of that law to said company will not impair or divest any rights acquired under or derived directly from its charter—unless, as before stated, it is claimed that said charter confers irrevocably the right to make unreasonable or unjust rates and the right to practice unjust discrimination. It will still be both the right and duty of the board of directors to fix and establish rates; and those rates will stand unless on an investigation by this Commission they are shown to be either "unreasonable or unjust" in themselves, or to constitute one of the forms of "unjust discriminations" denounced in the Act.

A further suggestion as to the construction of section 13 of the charter perhaps ought to be noticed. Its main purpose, we think, is directory. It was designed to impose duties upon rather than to grant powers to the directors. The first duty mentioned is that of the directors to make reports; second, to fix, determine and regulate charges for transportation. The direction necessarily implies the power to do the thing directed, but the power is only the incident of the

direction. The establishment of rates was essential for the convenience and protection of the public. Therefore the provision for it was rather in the nature of a condition of the charter than a grant of power. While it included the power to the extent of compliance with the requirement, it is hardly supposable that exclusive power or right in the sense claimed by the defendant was intended. Neither does it seem to us that the language, in the connection in which it is used, necessarily implies such power or right.

The order will be that defendants, the Northern Pacific Railroad Company and the Union Pacific Railway Company, forthwith cease and desist from charging or collecting a higher rate on sugar from San Francisco to Fargo than to St. Paul. It appearing, as before specifically set forth, that the Oregon Railway & Navigation Company, the Southern Pacific Company, and the St. Paul, Minneapolis & Manitoba Railway Company did not participate in the greater rate on sugar to Fargo than to St. Paul, as alleged in the complaint, they are not included in the order now issued in this case. Neither the Great Northern Railroad (which, in February, 1890, since the filing of the complaint, became lessee of the property of the St. Paul, Minneapolis & Manitoba Railway Company), nor the Canadian Pacific, has been made a party defendant, although they appear to have become parties to the rates complained of.

As the rates now in force to St. Paul appear from the evidence to be as low as they can be legitimately made, and any increase would result in a loss of the business to that point, the only practicable method of compliance with our order, unless the situation has changed since the hearing, would seem to be a reduction of the rates to Fargo so as to make them not more than the prevailing rates to St. Paul.

THE EAU CLAIRE BOARD OF TRADE v. THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, CHICAGO & ALTON RAILROAD COMPANY, ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY, CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, CHICAGO & NORTHWESTERN RAILWAY COMPANY, CHICAGO, ST. PAUL & KANSAS CITY RAILWAY COMPANY, MISSOURI PACIFIC RAILWAY COMPANY, GREAT NORTHERN RAILWAY COMPANY, WABASH RAILROAD COMPANY, CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY, DEFENDANTS;

AND

THE MUSSER LUMBER COMPANY, THE HERSHEY LUMBER COMPANY, THE LINDSAY & PHELPS COMPANY, CHRIST. MUELLER, THE DAVENPORT LUMBER COMPANY, THE CABLE LUMBER COMPANY, THE ROCK ISLAND LUMBER & MANUFACTURING COMPANY, DIMOCK, GOULD & COMPANY, CURTIS BROS. & COMPANY, W. J. YOUNG & COMPANY, C. LAMB & SONS, THE CLINTON LUMBER COMPANY, GARDNER, BATCHELDER & WELLS, D. JOYCE, THE LYONS LUMBER COMPANY, AND THE LANGFORD & HALL LUMBER COMPANY, THE KEITHSBURG LUMBER COMPANY, THE GEM CITY SAW MILL COMPANY, THE RAND LUMBER COMPANY, THE BURLINGTON LUMBER COMPANY, GILBERT, HEDGE & COMPANY, NAIRN, GILLIES & COMPANY, S. & J. C. ATLEE, W. E. TABOR & COMPANY, THE CARSON

& RAND LUMBER COMPANY, S. C. & S. CARTER, EVANS & SHEPARD, THE CANTON PLANING MILL COMPANY, THE CANTON SAW MILL COMPANY, THE BLUFF CITY LUMBER COMPANY, JOHN J. CRUIKSHANK, JR., THE EMPIRE LUMBER COMPANY, THE HARRIMAN & HURD LUMBER COMPANY, THE S. P. GIVEN LUMBER COMPANY, THE HANNIBAL SAW MILL COMPANY, THE HANNIBAL DOOR & SASH COMPANY, THE LA CROSSE LUMBER COMPANY, THE J. F. CRAWFORD LUMBER COMPANY, AND THE SCHULENBERG & BEOCKLER LUMBER COMPANY, THE LA CROSSE LUMBER EXCHANGE, INTERVENORS.

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Complaint filed, July 7, 1890.—Answer of original defendant, Chicago, Milwaukee & St. Paul Railway Company, filed August 2, 1890.—Order entered bringing in other defendants, September 17, 1890.—Order entered granting leave to Chicago, St. Paul, Minneapolis & Omaha Railway Company to intervene as a defendant, November 24, 1890.—Answers of new defendants filed October 13, 1890, to November 24, 1890; also on September 21, 1891.—Orders entered, allowing petitioning lumber dealers to intervene in behalf of the defense, November 21, December 17, 1890, and June 4, 1891.—Depositions filed April 3 to September 21, 1891.—Hearing had at Chicago, Illinois, September 21 and 22, 1891.—Briefs filed, September 21 to November 12, 1891.—Proposed findings of fact filed by complainant November 19, 1891.—Decided June 17, 1892.

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1. The doctrine that transportation charges should be proportioned to the distances between different points, *where those distances are greatly dissimilar*, has never been advocated by the railroads or recommended by the Commission. While distance is an ever present element in the problem of rates, and not unfrequently a controlling consideration, the general practice of rate making is opposed to the principle of exact proportion, and there is no opportunity for its application under present conditions. Where all the distances brought into comparison are considerable, and the differences between them relatively small, there should be substantial similarity in the respective rates, unless other modifying circumstances justify disparity.

2. That rates should be fixed in inverse proportion to the natural advantages of competing towns with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and the exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute.
3. On complaint of a relatively unreasonable rate on lumber from Eau Claire to various points on the Missouri river as compared with rates to the same points from La Crosse, Winona, and various other lumber shipping points: *Held*, That the case must mainly be determined by comparing the rate in question with the rates from neighboring towns, similar in size, situation and volume of competing traffic, and at approximately the same distance from common markets; that the rate complained of subjects Eau Claire to undue prejudice and disadvantage, and is unlawful; and that such rate should not exceed the rate from La Crosse and Winona by more than two cents per hundred pounds when, as at the time complaint was filed, the rate from those points is not over 11 cents per hundred, nor by more than two and one-half cents per hundred pounds above the present rate of 16 cents per hundred from La Crosse and Winona.
4. A railroad cannot be said to discriminate against a town which it does not reach and in whose carrying trade it does not participate; therefore, no case is made out against the carriers which were made parties at the request of the original defendant, because none of them have lines extending to Eau Claire. Preference, prejudice and other like terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. But these parties, having defended and endeavored to justify the differential found excessive, while not technically subject to an order for its correction, have no more right to render it ineffectual than to openly disregard a direction clearly within the scope of the Commission's authority. The intervening defendant, the Omaha road, though serving the complaining town, need not, for reasons stated, be included in the order directing the reduced rate, but the case will be held open as against that company for such direction as may hereafter be required.

*H. H. Hayden and Davis, Kellogg & Severance*, for Eau Claire Board of Trade.

*John W. Cary*, for Chicago, Milwaukee & St. Paul Railway Company.

*William Brown*, for Chicago & Alton Railroad Company.

*Britton & Gray*, for Atchison, Topeka & Santa Fe Railroad Company.

*Thomas F. Witherow* and *T. S. Wright*, for Chicago, Rock Island & Pacific Railway Company.

*J. W. Blythe*, *C. M. Dawes* and *Benton J. Hall*, for Chicago, Burlington & Quincy Railroad Company.

*W. C. Goudy*, for Chicago & Northwestern Railway Company.

*Lusk & Bunn*, for Chicago, St. Paul & Kansas City Railway Company.

*John S. Blair*, for Missouri Pacific Railway Company.

*W. H. Blodgett*, for Wabash Railroad Company.

*James H. Howe* and *S. L. Ferrin*, for Chicago, St. Paul, Minneapolis & Omaha Railroad Company.

*Cummins & Wright*, for Musser Lumber Company *et al.*

*Thomas Hedge*, for Keithsburg Lumber Company *et al.*

*Losey & Woodward*, for La Crosse Lumber Exchange.

#### REPORT AND OPINION OF THE COMMISSION.

**KNAPP**, *Commissioner* :

The substance of complainant's charge in this case is, that the rates maintained by the Chicago, Milwaukee & St. Paul Railway Company for the transportation of lumber, in car-load quantities, from various specified towns in the lumber producing districts of Wisconsin and Minnesota, to Kansas City, Omaha and other Missouri River points, discriminate unjustly against the city of Eau Claire, and operate to its serious prejudice and disadvantage. The formal complaint herein, which was directed against the above-named carrier only, sets forth with considerable detail the history and situation of the lumber industry in that region, and contains numerous statements in reference to distances, tariffs, tonnage, population and the like, all tending to establish the relative injustice asserted. The answer of this defendant substantially admits the specific facts alleged in the petition, but disputes some of its inferences and assertions, and indirectly denies that the rates in question are unreasonable or constitute any violation of legal duty. In further justification of the apparent disparity in charges on west-bound lumber as between Eau Claire and its immediate rivals, this



railroad in effect pleads its inability to alter the rates complained of without the consent, hitherto withheld, of other carriers engaged in transporting lumber to western destinations from various places on their respective lines which are competitors of Eau Claire, because those carriers, by lowering their rates at competing points to correspond with any reduction by this road at Eau Claire, could restore and maintain the existing *relation of rates* between these towns, which is the real grievance of complainant. It was therefore prayed that certain roads, which are enumerated in this answer, should be made parties to the proceeding, in order that the whole subject might be properly investigated and the various interested carriers bound by any ruling of the Commission. In compliance with this request an order was made bringing in the other railroads named in the title, except the Chicago, St. Paul, Minneapolis & Omaha Railway Company, which subsequently, on its own application, was permitted to intervene. Most of these corporations thereupon filed answers to the complaint; some of them setting forth the circumstances which led to the adoption of the present tariff on west-bound lumber and alleging that serious disturbance and injury would result from any interference with the rate established at Eau Claire, and all of them denying any actual or intended discrimination against the shippers of that city. In addition to the carriers thus made defendants, a large number of persons, firms and corporations engaged in the lumber business in various places in the States of Iowa, Illinois and Missouri, together with the La Crosse Lumber Exchange of La Crosse, Wisconsin, all claiming a direct and important interest in the controversy, were also at one time or another allowed to intervene. These parties are named and described as intervenors in the title of the case; and so far as they answered, furnished evidence, or otherwise participated in the hearing (and to a great extent they assumed the burden of the defense), they sought to sustain and defend the rates assailed in this proceeding. The introduction of these defendants, representing a large area of country and numerous transportation and commercial interests, greatly extended the range of investigation and opened up a broad field of inquiry.



In the voluminous testimony which has been placed upon the record there is little disagreement as to actual facts, but the claims of different parties and the elaborate arguments of counsel disclose many conflicting views and wide divergence of opinion. The nature of the controversy, with its diverse phases and relations, is so fully set forth in the formal findings, that no further analysis of the pleadings or other preliminary statement would seem to be required. In order that a complete summary of the proofs may be presented, and without special reference to their materiality or bearing, we find the following facts:

#### FINDINGS OF FACT.

1. The complainant, the Eau Claire Board of Trade, is an association of citizens and residents of the city of Eau Claire, Wisconsin, organized to promote the business interests of that city. The defendant railroad companies are severally common carriers engaged in the interstate transportation of lumber and other freight. The sources of supply of the west-bound lumber shipped over these roads are the forests of northern Michigan, Wisconsin and Minnesota; and the main points from which such shipments are made are Minneapolis, Eau Claire, Winona, La Crosse, Oshkosh, Milwaukee and Chicago, and the following towns on the Mississippi river, south of La Crosse, to wit: Dubuque, Clinton, Lyons, Fulton, Moline, Rock Island, Davenport, Muscatine, Burlington, Keokuk, Hannibal and Louisiana. The market or distributing towns to which these shipments are made are for the most part the "Missouri river points," Sioux City, Omaha, Council Bluffs, St. Joseph and Kansas City.

2. No one of the defendant roads reaches all these points of production. From Eau Claire shipments of lumber are made to the Missouri river over the Chicago, Milwaukee & St. Paul, the Chicago, St. Paul, Minneapolis & Omaha, and the Wisconsin Central. The Chicago, Milwaukee & St. Paul road (hereinafter designated the "Milwaukee"), has main lines as follows: From Chicago to Council Bluffs; from Marion, Iowa, on said former line, to Kansas City; from

Oshkosh to Milwaukee; from Milwaukee to Sabula Junction; from Minneapolis *via* Wabasha to Sabula Junction, called the "river line"; from Minneapolis to Mason City, called the "Iowa & Minnesota line." Minneapolis, Winona and La Crosse are on the "river line," but Eau Claire is on a branch forty-eight miles in length, connecting with that line at Wabasha. The Milwaukee road has an arrangement with the Iowa Central by which, in hauling from Eau Claire and Winona to Council Bluffs, it uses the latter road from Mason City to Pickering, a distance of 97 miles, and, in hauling to Kansas City, it uses the same road from Mason City to Hedric, a distance of 167 miles. The distances *via* the Iowa Central are considerably less than those over the Milwaukee line proper. The Chicago, St. Paul, Minneapolis & Omaha road (hereinafter styled the "Omaha") has a line extending from Eau Claire through St. Paul and Minneapolis to Sioux City, Omaha and Council Bluffs. It also has lines from Worthington, Minn., to Mitchell in South Dakota; from St. Paul and Minneapolis through Hudson, Wis., to Elroy, Wis.; from Hudson to Ashland and Bayfield on Lake Superior in northern Wisconsin; and from Eau Claire to West Superior and Duluth, Minn. Winona and La Crosse are also both located on the Chicago & Northwestern, and the Chicago, Burlington & Northern. La Crosse is also reached by the Green Bay, Winona & St. Paul, and Winona by the last-named road and the Winona & Southwestern; but these roads apparently do not participate in the lumber traffic.

All the other defendant roads, except the Missouri Pacific and Great Northern, have main lines leading from Chicago, and, by their several connections, from Milwaukee, Oshkosh and other points across the Mississippi to Missouri river markets. The points at which these roads cross the Mississippi, and the Missouri river points reached by them directly or through connections are shown by the following table:

Roads.	Crossing points on the Mississippi.	Missouri river points reached.
Chicago & Alton R. R.	Louisiana, Mo.	Kansas City.
Atchison, Topeka & Santa Fe R. R.	Ft. Madison, Ia.	(Kansas City, St. Joseph, Atchison and Leavenworth.
Chicago, Rock Isl- and & Pacific R'y	Rock Island, Ill.	{ Kansas City (in connection with the Hannibal & St. Joseph), Leavenworth, Atchison, St. Jo- seph, Council Bluffs and Omaha.
Chicago, Burling- ton & Quincy R. R.	Burlington, Ia. Quincy, Ill.	{ Council Bluffs, Omaha, St. Jo- seph, Atchison, Leavenworth, Kansas City and Sioux City— the last in connection with the Chicago & Northwestern.
Chicago & North- Western R'y.	Clinton, Ia., Winona & St. Paul, Minn.	{ Council Bluffs, Omaha and Sioux City.
Chicago, St. Paul & Kansas City R'y.	Dubuque, Ia.	{ St. Joseph, Leavenworth, direct. and Atchison, Kansas City, Council Bluffs and Omaha, by connections.
Wabash R. R.	Hannibal & St. Louis.	(Kansas City, direct, and St. Jo- seph, Atchison and Council Bluffs, by connections.

The Missouri Pacific Railway has lines running west from the Mississippi river to St. Louis and Belmont, Mo., and West Memphis and Helena, Ark., and reaching Kansas City, Leavenworth, Atchison, St. Joseph and Omaha; and the Great Northern line extends west from St. Paul and Minneapolis and reaches Sioux City in connection with Sioux City & Northern Railway.

The roads having lines from the river towns named below to lumber markets on the Missouri are as follows :

From Dubuque—the Chicago, Milwaukee & St. Paul, Illinois Central, and Chicago, St. Paul & Kansas City.

From Clinton—the Chicago, Milwaukee & St Paul, Chicago, Burlington & Quincy and Chicago & Northwestern.

From Lyons—the Chicago & Northwestern and Chicago, Milwaukee & St. Paul.

From Fulton—the Chicago & Northwestern, Chicago, Milwaukee & St. Paul and Chicago, Burlington & Quincy.

From Moline—the Chicago, Milwaukee & St. Paul, Chicago, Burlington & Quincy and Chicago, Rock Island & Pacific.

From Rock Island—the Chicago, Rock Island & Pacific, Chicago, Milwaukee & St. Paul and Chicago, Burlington & Quincy.

From Davenport—the Chicago, Rock Island & Pacific, and Chicago, Milwaukee & St. Paul.

From Muscatine—the Chicago, Rock Island & Pacific.

From Burlington—the Chicago, Burlington & Quincy and Chicago, Burlington & Kansas City.

From Keokuk—the Chicago, Burlington & Quincy, Chicago, Burlington & Kansas City and Chicago, Rock Island & Pacific.

From Hannibal—the Hannibal & St. Joseph, Chicago, Burlington & Quincy, and Wabash.

From Louisiana—the Chicago & Alton.

From Quincy—the Chicago, Burlington & Quincy, Hannibal & St. Joseph, and Quincy, Omaha & Kansas City.

From Winona—the Chicago, Milwaukee & St. Paul, Chicago & Northwestern, Chicago, Burlington & Northern; the last named being a party to the Chicago, Burlington & Quincy system which reaches the Missouri river.

From La Crosse—the Chicago, Milwaukee & St. Paul, Chicago & Northwestern, Chicago, Burlington & Northern; the last named being a party to the Chicago, Burlington & Quincy system, which reaches the Missouri river.

From Eau Claire—the Chicago, Milwaukee & St. Paul, Chicago, St. Paul, Minneapolis & Omaha; it is also located on the Wisconsin Central, which connects with the above-named roads.

The Milwaukee and Omaha are the only roads made defendants in this proceeding which reach Eau Claire. The Missouri Pacific, the Chicago, St. Paul & Kansas City, and the Chicago & Northwestern Railway Companies admit that they are parties to joint rates on lumber from Eau Claire, and all the defendant roads appear to have joined in fixing the differentials complained of in this case. The Wisconsin Central, of which the Northern Pacific Railroad Company is lessee, is not made a party defendant, but its line now reaches Eau Claire and is carrying lumber to Missouri river

points in connection with the Chicago, St. Paul & Kansas City, and also in connection with the Great Northern. The differentials, which are the ground of complaint in this proceeding, were fixed by what is known as the "Bogue Award," which is hereinafter set forth. Since that award was made other lines of road have become engaged in carrying lumber to Missouri river points; among these are the Chicago & Kansas City, and the Atchison, Topeka & Santa Fe roads from Chicago.

3. As above stated, the sources of supply of the lumber carried by these roads are the forests of northern Minnesota, Wisconsin and Michigan. The Minnesota timber is manufactured into lumber largely at Minneapolis, and thence transported to market; the Michigan timber is manufactured into lumber in that state and carried by water to Milwaukee, Chicago and other lake ports; the Wisconsin timber is manufactured extensively at Eau Claire, Winona, La Crosse and Oshkosh. Eau Claire and La Crosse are in western Wisconsin, the former about 75 miles by water from the Mississippi river, and the latter on its eastern bank; Winona is in Minnesota, on the western bank of the Mississippi, and Oshkosh is on Lake Winnebago in eastern Wisconsin. Minneapolis is about 100 miles from Eau Claire; Winona about 80 miles, and La Crosse about 108 miles. Eau Claire is situated at the junction of the Eau Claire and Chippewa rivers; the Eau Claire is a branch of the Chippewa, and the latter empties into the Mississippi. Logs are floated down the Eau Claire and Chippewa rivers to Eau Claire, and thence on the Chippewa and Mississippi rivers to Winona and La Crosse, and also to Mississippi river points below. Logs are also floated down the Black river to La Crosse and other Mississippi river towns. A large part of the timber on the Eau Claire and Black rivers can be floated with about equal facility down either stream and taken to Winona and La Crosse on the one hand or Eau Claire on the other. Eau Claire, Winona, La Crosse and Oshkosh are small cities, each having from 18,000 to 20,000 inhabitants, while Minneapolis has about 150,000. These cities are all natural lumber markets;

they have large saw mills, and the manufacture, sale and shipment of lumber are conducted on a large scale at Minneapolis, and constitute the principal business of the other places. Eau Claire and all the cities of Wisconsin, Minnesota and the northern peninsula of Michigan, and also Mississippi river points engaged in the manufacture and shipment of lumber to the Missouri river, may be said to be in competition in this business, but the most active competitors of Eau Claire are Winona and La Crosse. The principal distributing points for Eau Claire lumber are, and for 20 or 25 years have been, the Missouri river towns, which are also the principal markets for other shipping points both on the Mississippi river and in the interior. Eau Claire seems to be more rigidly confined than its competitors to the Missouri river market. Since 1884, when the Bogue award was made, southern yellow pine from the States of Georgia, the Carolinas, southern Missouri, Arkansas and Texas, has come into competition with the white pine from Minnesota, Wisconsin and Michigan. This competition extends north to the southern line of Minnesota, and is strong in Missouri, Kansas, Nebraska and Iowa. The natural tendency of this competition is to reduce the price of the northern pine, and in that way affect transportation rates on the latter, but it does not appear to have an appreciable effect on the *relation* of rates on lumber between Eau Claire and its immediate competitors.

4. Eau Claire is situated in what is known as the "Chippewa District." In this district and in the vicinity of Eau Claire are Chippewa Falls, Badger's Mills and Porter's Mills, at which lumber is manufactured in large quantities. As appears from the "North Western Lumberman," copies of which were introduced in evidence, the aggregate cut of lumber at the points and in the districts named therein, from 1878 to 1890, both inclusive, is shown by the following table:

CUT OF LUMBER

Year.	Chippewa Dist., including Eau Claire.	Winona.	Black River Dist. includ- ing La Crosse.	Minneap- olis.	Mississippi River.	Total west of Chicago District.
1878.	154,119,000			130,274,076	480,698,000	1,023,974,000
1879.	243,665,000			149,754,547	688,141,000	1,573,198,000
1880.	350,632,000			195,452,182	928,035,000	2,072,257,000
1881.	380,390,917			234,254,071	1,153,191,303	2,455,815,694
1882.	414,994,735			314,363,166	1,372,219,903	2,931,924,196
1883.	428,852,505	96,475,000	155,413,000	272,709,222	1,290,062,690	3,134,331,793
1884.	454,544,723	90,630,550	187,700,000	300,724,379	1,414,294,695	3,448,646,757
1885.	372,956,872	96,700,000	173,700,000	313,998,166	1,437,889,798	3,169,018,977
1886.	347,492,315				1,326,158,802	3,115,128,167
1887.	325,783,661				1,262,778,448	3,307,700,150
1888.	314,192,782	120,000,000	213,050,561	337,663,301	1,489,798,477	3,758,453,946
1889.	305,415,348	119,500,000	198,835,421	275,855,648	1,343,737,412	3,594,367,960
1890.	394,622,292	145,000,000	243,195,583	343,573,762	1,582,907,021	4,185,130,947
Percent'g of increase fr'm 1878 to 1884... 195 per cent. 194 per cent. 237 per cent.						
Percentage of increase or decrease fr'm 13 per cent. 60 per cent. 30 per cent. 14 per cent. 12 per cent. 20 per cent.						
1884 to 1890, Decrease. Increase. Increase. Increase. Increase. Increase.						

5. The Omaha road was built to Eau Claire in 1878 or 1879, and the Milwaukee road about 1882. Prior to the building of these roads, lumber produced at that place was rafted and then floated down the Chippewa and Mississippi to various towns on the latter river, from which it was distributed by rail to market destinations mainly in the west. These towns on the Mississippi have been engaged in this business since 1850 or 1852. After these roads were constructed, Eau Claire entered largely into the business of "piling, drying and manufacturing lumber" and shipping the same to market by rail. About half the cut at Eau Claire in 1890 was shipped in this way, and the other half was rafted to Mississippi river towns; and it is estimated that 80 per cent. of the lumber rafted to points below Winona comes from the Chippewa river. Eau Claire appears to be well adapted by location and in other respects for the manufacture and sale of lumber. It has a natural booming ground or place for the safe storage of logs, cheap transportation from the stump to the mills, proximity to the timber and locations suitable for mills and yards. Being situated nearer the pine forests, the sources of timber supply, and at the



confluence of two rivers which penetrate those forests—the Eau Claire and Chippewa—it appears to have natural advantages over its neighboring competitors. Logs for Eau Claire mills are subject to a boomage charge at that place for 50 cents per thousand feet, and they also have to be separated from the mass of logs intended for Mississippi river towns. Chippewa river logs for those towns are driven at a nominal cost *via* Eau Claire to the Beef Slough Boom where that river empties into the Mississippi. These logs are subject to a boomage charge at Beef Slough of 50 cents per thousand feet, but are not subject to such charge at Eau Claire. In order to float logs on the Mississippi to lumber points on the river, it is necessary to bind them together in rafts, but this expense is not incurred in floating logs to Eau Claire. These rafts have to be towed from Beef Slough to points below, and this occasions an additional expense. The weight of evidence is to the effect that it costs from 40 cents to 75 cents more per thousand feet to transport logs to Winona than to Eau Claire. The cost of towage from Beef Slough to Winona is about 12 cents per thousand feet; to Rock Island, Davenport, Muscatine and Moline, about \$1.23; and to Hannibal, about \$1.95. There is no evidence as to the cost of towage to other lumber towns on the Mississippi. Besides the Chippewa and Black rivers, logs also come down the St. Croix river to the Mississippi. Rafting is not necessary in bringing logs down the Black river to La Crosse. Logs are not damaged in being transported by water in rafts, but sawed lumber is injured by the boring which is necessary in forming it into rafts, and also by discoloration from water. After lumber is in the raft, the cost of its transportation by water down the Mississippi is less than for the same distance by rail; but, including the rafting and preceding expenses, the testimony is to the effect that lumber can be shipped from Eau Claire by rail direct to Missouri river markets at as little, if not less, cost than it can be floated to Mississippi river points and thence transported by rail to those markets. The railway companies whose lines run from Chicago across the Mississippi to the Missouri river territory naturally desire that lumber be carried by water down the Mississippi to shipping



points on that river, and be thence shipped over their roads to the Missouri river markets. The Omaha road is also interested in maintaining high lumber rates at Eau Claire, because of an agreement between that road and the purchasers of its timber lands in northwestern Wisconsin, by which those purchasers bound themselves to ship over its line the timber from such lands (which is further from the Missouri river markets than Eau Claire timber), on condition of receiving the same rates as might be charged by that road on such shipments from Eau Claire.

6. The rates from Eau Claire and the other shipping points to the Missouri river markets are based on the rate from Chicago, being certain differentials over or under that rate, and the same rate is made from any one of the shipping points to all the Missouri river markets, although the distances to the latter vary materially. The rate from Eau Claire seems to have been originally 2 cents per hundred pounds above the rate from Chicago, but there is no evidence of any considerable shipments at that figure, and it does not appear to have become a permanent and established rate. Prior to April, 1883, but little lumber was shipped by rail from La Crosse and Winona, and no regular lumber rate from those towns was in force until that date, when the rate from Chicago to Kansas City and Omaha appears to have been 15 cents, from La Crosse and Winona 15 cents, and from Eau Claire 17 cents. In March, 1884, there was a rate of 15 cents from La Crosse and Winona to Kansas City, and of 20 cents from Eau Claire to that point, but how long it continued does not clearly appear. The Eau Claire rate seems to have remained nominally at 2 cents above the Chicago rate until a period just prior to the Bogue award, when it was advanced to 4 cents above the Chicago rate. This 2 cent differential appears to have occasioned much dissatisfaction, for while it existed there were frequent fluctuations and general instability in the lumber rates. The situation at that time was described by some of the witnesses as a "rate war."

In the early history of the lumber industry in this territory the principal points of competition were Chicago on

the one hand, and St. Louis, Hannibal and Louisiana on the other. Chicago received its lumber from Michigan by way of the lake, and the other towns received theirs by way of the Mississippi. As railroads were built from time to time into the northern pineries, and numerous towns engaged in the manufacture of lumber, the conflict of rates increased and much uncertainty and demoralization resulted. After several unsuccessful attempts to adjust these differences, the railway companies finally submitted the matter to Mr. George M. Bogue, under an agreement between them to abide by his arbitration. The decision rendered by him, known as the "Bogue Award," was made May 26, 1884, and is as follows:

**"AWARD OF THE ARBITRATOR AS TO THE DIFFERENTIALS WHICH SHALL GOVERN ON LUMBER TO MISSOURI RIVER POINTS.**

**"CHICAGO, May 10, 1884.**

**"J. W. MIDGLEY, Esq., *Chairman, etc., Chicago.***

"Dear Sir: The question as to what difference shall govern in rates from the several shipping points on or east of the Mississippi river on lumber destined to Missouri river points, referred to me for arbitration, has had my careful consideration. All the lines in interest had opportunity to present arguments to me, and nearly all of them availed themselves of the privilege, but a few preferred, apparently, to leave the question in my hands. The arguments submitted are very full, covering, I think, every question that can possibly arise in the consideration of the subject; and it is not strange that arguments prepared from so many different standpoints present many conflicting statements. Nearly all the lines appear before me in the light of special pleaders, each representative seeming to think that the interest of his line is paramount to all others. I have, however, very carefully examined the different items of cost, as submitted in the different arguments: have visited the large manufacturing points on the Chippewa river; interviewed many of the lumber manufacturers; have visited several of the Mississippi river points, and in fact, have taken every precaution to fully inform myself of the subject, so that I might be able to survey the situation from all sides, firmly believing that no decision which is not tolerably equitable will be strictly observed or long respected.

"I am impressed with the idea that, instead of this question being settled on the basis of the cost of lumber, the question at issue is: What rate will enable each line party to this arbitration to place its fair proportion of lumber in the territory under consideration? For it is fair to assume that no road will see its principal lumber points dismantled and dried up till all efforts to retain their prominence have been exhausted; and, meantime, in the effort to do this, a great deal of money will be wasted. It is no doubt true that the roads reaching Chicago—which is the largest primary grain and stock receiving point in the world—can in their return make rates on

lumber without loss, which would net a loss if applied to the roads reaching the pineries direct; and it is doubtless true, also, that the actual cost of the haul from Chicago does not greatly exceed the shorter haul from the Mississippi river; and so long as this is the case, it is natural to expect that the Chicago roads will support the Chicago market.

“ This theory must not, however, be carried to the extreme, for if transportation costs anything, it certainly costs something for the haul from Chicago to the Mississippi river; and it is neither just nor politic for any road to claim that the rate from the Mississippi river should be as much or more than the Chicago rate, whatever may be the cost or the price at the two markets.

“ While, therefore, it seems easily apparent that lumber can be sold at the Mississippi river at as low, or lower, prices than at Chicago, it cannot be safely argued that the same rate should be made for so much greater distance.

“ After a most careful investigation of the subject in all its bearings, and with a keen appreciation of the delicate and difficult duty confided to me, I shall make the following award :

FROM—				
St. Louis.....	6½	cts.	per cwt.	less than Chicago
Louisiana, Hannibal and Quincy.....	5½	“	“	“
Keokuk to Burlington inclusive.....	4½	“	“	“
Rock Island, Moline, Davenport and Muscatine.....	3½	“	“	“
Fulton, Clinton, Lyons, Sabula, Comanche and Dubuque.....	2	“	“	“
McGregor and Prairie du Chien.....	1	“	“	“
La Crosse and Winona.....	1	“	“	above
Minneapolis and St. Paul.....	2	“	“	“
Stillwater.....	4	“	“	“
Menominee (Wis.), Eau Claire and Chippewa Falls.....	6½	“	“	“
Wausua, Steven's Point, Centralia, Merrill, Grand Rapids and territory in that district, or central Wisconsin.....	7	“	“	“
Necedah.....	7	“	“	“
Merillan.....	6½	“	“	“
Oshkosh.....	5½	“	“	“
Fond du Lac .....	5½	“	“	“
Menominee and Marinette, Mich.....	7	“	“	“
Fort Howard and Green Bay.....	6	“	“	“
Oconto.....	6½	“	“	“
Muskegon, Ferrysburg, Grand Haven, Grand Rapids, and Allegan, Mich.....	6½	“	“	“

“ All of which is respectfully submitted.

“ GEORGE M. BOGUE, *Arbitrator.*”

7. To show the construction placed upon this award by

railroad authorities and their understanding of the principle upon which it was based, we make the following extracts from the testimony. A. C. Bird, traffic manager of the "Milwaukee" road, stated that "the acknowledged principle of the award was that each company was entitled to all the lumber it could carry at reasonable rates—that is, rates that were *relatively fair as between the railroads*, and to put all the manufacturers on any one road on a fair equality with the manufacturers on another road, to the end that each road might thereby receive the benefit of its manufacturing industries;" and, again, that "primarily the object of the Bogue award was to place each line in a position to carry its fair share of the Missouri river lumber, and further, to place each manufacturing locality upon an even footing with its competitors. . . . *If Eau Claire could produce lumber cheaper than Winona or La Crosse, then the latter points were to have a lower rate so as to enable them to compete.*"

This award appears to have been observed by the defendant roads since its date, May 26, 1884, except that from February 8 to June 20, 1888, the Milwaukee road had a 4 cent differential in force on shipments from Eau Claire. There have also been from time to time slight changes in the differentials at the lower Mississippi river points. As soon as the 4 cent differential was put in force at Eau Claire, rates were reduced in the same proportion at Chicago, Muscatine, Rock Island, Davenport, Louisiana, St. Louis and Minneapolis. Upon this action by the other roads, the Milwaukee road restored the 6½ cent differential. It is plain that if the rate from Eau Claire should be reduced, a corresponding reduction could be made by the roads leading from other lumber producing and shipping points which would restore the present relation of rates between Eau Claire and such other points.

8. At the time the complaint was filed, July 7, 1890, the Chicago rate to Missouri river points was 10 cents per hundred pounds. It has since been advanced to 15 cents.

The following table shows the rates from the towns named therein to Missouri river points, with the "Bogue differen-

tials" applied to the rates from Chicago of 10 and 15 cents, respectively; also the present rates as announced by the tariffs of the Western Freight Association:

	Rates under Bogue differentials.		Present rates as per tariffs of Western Frt. Association.
	Cents.	Cents.	Cents.
Chicago.....	10	15	15
Milwaukee.....	10	15	15
Minneapolis.....	12	17	17
Eau Claire.....	16½	21½	21½
Winona.....	11	16	16
La Crosse.....	11	16	16
Oshkosh.....	15½	20½	20½
Clinton.....	8	13	14½
Fulton.....	8	13	14½
Lyons.....	8	13	14½
Moline.....	6½	11½	13
Rock Island.....	6½	11½	13
Davenport.....	6½	11½	13
Muscatine.....	6½	11½	13
Quincy.....	4½	9½	10½
Burlington..	5½	10½	11½
Keokuk.....	5½	10½	11½
Hannibal.....	4½	9½	10½
Louisiana.....	4½	9½	10½
St. Louis.....	3½	8½	8½

While these rates are based on the Chicago rate, it appears that the building of large saw mills at other points, and the extension of railways into the timber regions of the northwest, have, to a large extent, withdrawn from Chicago the business of supplying lumber to western markets. Chicago, however, does as large a business as heretofore in supplying its local demand and in shipping east. Lumber from Oshkosh is also shipped extensively through Chicago to the east; and it appears that the western shipments from both Chicago and Oshkosh are mainly the surplus remaining after eastern markets have been supplied.

9. A carload of lumber is about 15,000 ft., the weight of which is about 35,000 lbs. The following table, showing the distances by short lines from Eau Claire and other shipping points therein named to Sioux City, Council Bluffs, St. Joseph and Kansas City, is believed to be correct:

## DISTANCES BY SHORT LINES.

	TO	Sioux City.	Council Bluffs.	St. Joseph.	Kansas City.
FROM—		Miles.	Miles.	Miles.	Miles.
Chicago.....		517	488	479	458
Eau Claire.....		358	457	586	605
Winona.....		328	427	556	560
La Crosse.....		356	443	543	540
Minneapolis.....		263	362	491	531
Oshkosh.....		580	604	655	647
Clinton, )					
Fulton, -		382	355	389	380
Lyons, )					
Moline, )					
Rock Island, -		416	317	319	337
Davenport, )					
Muscatine.....		396	297	292	310
Quincy.....		416	317	207	226
Burlington.....		355	291	273	341
Keokuk.....		348	304	214	213
Hannibal.....		416	317	207	226
Louisiana.....		441	342	232	240
St. Louis.....		511	412	307	277

On the basis of these distances and estimating a carload at 35,000 lbs., the following are the rates per car per mile between said points:

## RATE PER CAR PER MILE.

	TO	Sioux City.	Council Bluffs.	St. Joseph.	Kansas City.
FROM—		Cents.	Cents.	Cents.	Cents.
Chicago.....		10.15	10.75	10.90	11.46
Eau Claire.....		21.01	16.46	12.84	12.47
Winona.....		17.07	13.11	10.07	10.00
La Crosse.....		15.73	12.64	10.25	10.37
Minneapolis.....		22.62	16.43	12.11	11.20
Oshkosh.....		12.37	11.87	10.95	11.06
Clinton, )					
Fulton, -		11.91	12.81	11.69	11.97
Lyons, )					
Moline, )					
Rock Island, -		9.67	12.70	12.61	11.94
Davenport, )					
Muscatine.....		10.16	13.55	13.78	12.98
Quincy.....		7.99	10.48	16.06	14.71
Burlington.....		10.35	12.62	13.46	10.77
Keokuk.....		10.56	12.09	17.17	17.25
Hannibal.....		7.99	10.48	16.06	14.71
Louisiana.....		7.53	9.72	14.33	13.85
St. Louis.....		5.82	7.22	9.69	10.74

The rate per ton per mile is shown by the following table:—

## RATE PER TON PER MILE.

	TO	Sioux City.	Council Bluffs.	St. Joseph.	Kansas City.
FROM—		Cents.	Cents.	Cents.	Cents.
Chicago.....		0.58	0.61	0.62	0.65
Eau Claire.....		1.20	0.94	0.73	0.71
Winona.....		0.97	0.74	0.57	0.57
La Crosse.....		0.90	0.72	0.58	0.59
Minneapolis.....		1.29	0.93	0.69	0.64
Oshkosh .....		0.72	0.67	0.62	0.63
Clinton, )					
Fulton, - .....		0.68	0.73	0.67	0.69
Lyons, )					
Moline, )					
Rock Island, - .....		0.55	0.72	0.72	0.68
Davenport, )					
Muscatine.....		0.58	0.77	0.78	0.74
Quincy.....		0.45	0.60	0.91	0.84
Burlington.....		0.59	0.72	0.76	0.61
Keokuk.....		0.60	0.69	0.98	0.99
Hannibal.....		0.45	0.59	0.91	0.84
Louisiana. ....		0.43	0.55	0.81	0.79
St. Louis.....		0.33	0.41	0.55	0.61

From these tables it appears that the rates per car per mile and per ton per mile are considerably greater from Eau Claire to the four Missouri river points named than from any of its immediate competitors, except in the instance of the rates per car per mile and per ton per mile from Minneapolis to Sioux City, and that said rates are also greater from Eau Claire than from most of the Mississippi river points.

10. As before stated, Minneapolis, Winona and La Crosse are on the main line of the Milwaukee road from Chicago to Minneapolis, while Eau Claire is 48 miles distant from the main line on a branch road from Wabasha. On an average, there is a train and a half each way per day on this branch road, which is about one-tenth of the business of the main line. This branch road is comparatively level, with no difficult grades, and the cost of "physical movement" of a train over it is not greater than over the main line. It appears, however, that a full train cannot always be made up on this branch line, and hence engines employed there cannot always be utilized to their full capacity. As a general rule the operating expenses per ton per mile are greater on branch than on main lines. Eau Claire is, however, on the main line of the Omaha road, and is reached by the Wisconsin Central

and other roads hereinbefore named. Oshkosh is also on a branch of the Milwaukee road about 40 or 50 miles from the main line. It may be stated as in the nature of an admission, that Mr. E. P. Ripley, Third Vice-President of the Milwaukee road, testified that he knew of no "conditions that should make the rate higher from Eau Claire than from Oshkosh, except that Eau Claire is nearer the lumber producing territory and perhaps may be said to be able to pay more," and that "there are no dissimilar conditions existing at Winona, La Crosse and Minneapolis, as compared with Eau Claire which would justify the charge of a higher rate per car per mile on lumber from Eau Claire to the Missouri river points than from the points first named, except that they are farther from the supply and it costs more to get the logs there."

The general rule that the cost is less per ton per mile on long than on short hauls is subject to exceptions, and one of these is found where the business on the long haul goes over different divisions of a line, necessitating extra handling and switching. The evidence is to the effect that it costs less per ton per mile to haul freight from Burlington, Moline, Rock Island, Davenport, Lyons, Fulton and Clinton to Council Bluffs than from Eau Claire, notwithstanding the shorter distances from the former towns, but the extent of this difference in cost is not stated.

It is shown that more or less empty cars are hauled to Eau Claire, Winona, La Crosse and other shipping points, but it does not appear that the difference between the number of such cars hauled to Eau Claire and to such other towns is sufficient to constitute an important factor in fixing their relative rates.

11. The average weight of a carload of lumber being about 35,000 lbs., the total freight per carload to Missouri river points, under the Bogue differentials, is about \$75.25 from Eau Claire; from Winona and La Crosse about \$56.00; from Minneapolis about \$59.50; from Chicago about \$52.50, and from Oshkosh about \$71.75; making the differences per carload against Eau Claire in favor of Winona and La Crosse about



\$19.25, in favor of Chicago about \$22.75, in favor of Minneapolis about \$15.75, and in favor of Oshkosh about \$3.50. As is shown by the table of distances above given, the mileage from Eau Claire is somewhat greater than from Winona and La Crosse.

Eau Claire, Winona and La Crosse procure their lumber from practically the same region of country, but, as before stated, Eau Claire has natural advantages of location over the latter towns in being nearer the sources of supply. Under the system of differentials in force, timber can be and is hauled from points three or four miles west of Eau Claire across the Eau Claire river to Black river, a distance of seven miles, and carried by the latter to La Crosse. The differentials are important factors in making up the price lists on lumber from the several shipping points, and it is estimated that the difference in rates prevailing at Eau Claire, Winona and La Crosse has practically depreciated Eau Claire lumber, as compared with Winona and La Crosse lumber, about \$300,000 each year since the Bogue award went into effect. It further appears that since the system of rates established by that award has been in force many mills in and about Eau Claire have gone out of business or been moved to other points; its population has decreased from about 22,000 to 18,000; and, as shown by the table heretofore given, the cut of lumber in the district including Eau Claire has fallen off from 454,544,723 feet in 1884, to 394,622,292 feet in 1890. From 1878, about the time the first railroad (the Omaha) was built to Eau Claire, the cut of lumber in the Eau Claire district had annually increased up to and including 1884. On the other hand, the cut of lumber at Winona increased from 90,630,550 feet in 1884 to 145,000,000 feet in 1890, and in the district including La Crosse it increased from 187,700,000 feet in 1884 to 243,195,583 feet in 1890. There was also an increase at Minneapolis and several of the points on the Mississippi river. Under the 2 cent differential on shipments from Eau Claire, which prevailed more or less constantly from about the time the Milwaukee road was built to Eau Claire until a short time prior to the Bogue award, the lumber companies at Eau Claire expended very considerable

sums in changing their mode of business, from rafting and floating their lumber down the Mississippi to piling, drying and re-manufacturing it at Eau Claire, and shipping thence by rail. During this period Eau Claire rapidly increased in population and appears to have enjoyed a high degree of prosperity. After the Bogue award was put in effect, the shipment of lumber from Eau Claire over the Omaha road was substantially abandoned. The evidence is to the effect that, under the existing differential, Eau Claire cannot successfully compete with Winona and La Crosse in piling lumber and shipping it by rail to Missouri river markets.

12. About a year previous to the commencement of the present proceeding, a similar proceeding was begun in behalf of Eau Claire, but was subsequently discontinued at the request of the traffic manager of the Milwaukee road and the general freight agents of the Omaha and the Wisconsin Central. These railway officers substantially admitted that the 6½ cent differential was too high, and promised on the withdrawal of that proceeding to have the Eau Claire differential lowered if they could induce the other lumber roads to agree to it. At a meeting of railroad officials held for the consideration of this matter, the representatives of these roads voted for a reduction of the Eau Claire rate, but the proposition did not receive the support of the other roads, and was defeated. Furniture and perhaps some other articles take the same rate to Missouri river points from Eau Claire as from Chicago, but it was stated that this rate on furniture was made to encourage its manufacture at Eau Claire. The Milwaukee managers virtually say that they consider the Eau Claire rate on lumber too high and that they are willing to reduce it, but allege that they are prevented from doing so by carriers from other lumber producing points interested in sustaining the Bogue differential. Most of the evidence was furnished by the intervenors, and no witness was called by the Milwaukee Company.

#### CONCLUSIONS.

The case presented by the complainant rests upon the general averment that rates on lumber from the city of Eau

Claire to certain specified points on the Missouri river are unreasonable and oppressive in comparison with rates on the same articles from Minneapolis, Oshkosh, La Crosse and Winona. The lower rates from Minneapolis and Oshkosh are not made the leading feature of this contention, the more distinct and special ground of complaint being the alleged disparity between Eau Claire and its immediate rivals, La Crosse and Winona. These three towns have considerable similarity in location, industries, population and distance from western centres of distribution, and they are active competitors with each other in the various lumber markets which they seek to supply. So far as has been made to appear, the west-bound rates on this commodity from La Crosse and Winona have at all times been the same; but since May, 1884, when the so-called "Bogue award" went into effect, the rate from Eau Claire has always been greater by five and one-half cents per hundred pounds, except for a period of about four months in the spring of 1888 when this excess was only three cents a hundred.

The first circumstance to arrest attention is the attitude of the Chicago, Milwaukee & St. Paul road. This carrier is the only defendant named in the original complaint, and the only one against which relief is now distinctly demanded. The great system of railways operated by this company embraces in its mileage lines which connect each of these three towns with the principal lumber markets on the Missouri river, and its alleged discrimination against Eau Claire is the essential grievance sought to be redressed in this proceeding. In the answers filed by this defendant there is no denial that the lumber rate from Eau Claire is out of proportion to the rate from La Crosse to Winona, nor is there any disclosure of facts concerning the location and business of these rival places, and its own relation to them as a common carrier, which are claimed to justify this disparity. No witness was produced upon the trial at the direct instance of this company, and the argument of its counsel at the final hearing was mainly confined to a statement of its position. If this position is correctly apprehended by us, the Milwan-

kee road virtually concedes that the existing rates on west-bound lumber discriminate against Eau Claire, and that it is entitled to lower charges on this article as compared with the competing towns of La Crosse and Winona. This admission is coupled with a professed willingness to make a substantial reduction in the Eau Claire rate, provided other defendant carriers engaged in transportation of lumber to Missouri river markets, from various producing points on their lines, will not make a corresponding reduction at those places to neutralize the effect of lower charges at Eau Claire. As evidence of its good faith in taking this position, the Milwaukee Company shows that the reduced rate which it conceded to Eau Claire in 1888 was followed by equivalent reductions granted at once to those other towns by rival carriers, which rendered its own action in aid of Eau Claire wholly ineffectual, and claims that it was compelled to restore the present differential rather than continue a contest injurious to itself and of no benefit to that community. In effect, therefore, this defendant acknowledges that Eau Claire is unjustly treated, but alleged in extenuation that it is powerless to afford relief.

A brief examination of the findings discloses the reasons for this anomalous situation. At a number of places on the Mississippi south of La Crosse the manufacture of lumber is extensively carried on, the timber from which it is produced being mainly obtained along the tributary streams north of that point. Each of these towns is connected with the Missouri river by one or more of the defendant railroads other than the Milwaukee. These towns compete in the same markets with the lumber manufacturing districts nearer the timber supply, and they naturally desire to retain and develop an industry in which they are so largely interested. The railroads extending westerly from those places are equally anxious for the traffic which this industry supplies, and they appear to have some advantage over their northern competitors in shorter distances and greater aggregate tonnage. Any reduction, therefore, in the rate established at Eau Claire, which would tend to increase the output of lumber in that locality at the expense of lumber towns more

remote from the forest sources, is deemed by those towns and the carriers identified with them inimical to their common interests, and meets, almost as a matter of course, their combined opposition. Under these circumstances it is obvious that the lumber carrying roads which do not reach Eau Claire and which are quite independent of the Milwaukee system, *have it in their power* to perpetuate the inequality of which that town complains by making a reduction in rates from other points equal to any reduction which the Milwaukee company may make at Eau Claire. This in substance is the excuse offered by the original defendant for maintaining rates on lumber shipments from Eau Claire which it admits to be relatively unjust; and its request that other carriers acting under the Bogue award be made parties to the proceeding was an indirect invitation to them to answer the accusation of the complainant.

So far as the defense interposed by these parties goes to the merits of the controversy, it rests ultimately upon two propositions. One is, that, under the schedule of rates fixed by the Bogue arbitration, Eau Claire is now paying less for the transportation in question than the lower Mississippi towns, *in proportion to their respective distances from the common markets*; the other is, that any interference with a system of charges which numerous carriers have so long enforced and to which the lumber interests of so many towns have become adjusted, would result in a demoralizing "rate war" between these competing roads, and inflict injury upon other localities much greater than any advantage which might accrue to Eau Claire.

The first of these positions is readily seen to be untenable. The doctrine that transportation charges should be in proportion to the distances between different points, *where those distances are greatly dissimilar*, has never been advocated by the railroads or recommended by the Commission. It may be the rule to which tariff construction will some time approximate, but there is no opportunity for its application under present conditions. To fix the rate for a thousand miles at twice the sum prescribed for half the distance would be most

arbitrary and intolerable. It does not follow, therefore, that Eau Claire should pay  $21\frac{1}{2}$  cents for a haul of 603 miles to Kansas City, because Keokuk pays  $11\frac{1}{2}$  cents for a haul of 213 miles to the same place. The whole practice of rate-making is opposed to the principle of exact proportion, and even in theory there is little reason for its adoption. But distance, nevertheless, is an ever-present element in the problem of rates and not unfrequently a controlling consideration. Where all the distances brought into comparison are considerable, and the differences between them relatively small, we should expect substantial similarity in the respective rates, unless other modifying circumstances justified a disparity. It is doubtless true that the present adjustment of charges gives Eau Claire a rate per ton per mile not greater than the rate per mile from some of the shipping points on the lower Mississippi, but how does that fact excuse inequality between Eau Claire and places nearer by, whose competition is much more active and direct? The rates now in force may be relatively just as between Eau Claire and Davenport, and yet seriously unequal as between Eau Claire and Winona. Every locality in a producing region of such wide extent as the one in question is more or less interested in the rates on a common commodity from all other shipping places in that territory, but at the same time each of them is chiefly concerned with the rates from contiguous towns whose situation and facilities are not greatly unlike its own, and which are its actual and constant rivals in the same markets. It is, therefore, no sufficient answer to complainant's charge to show that the rate from Eau Claire is not proportionally higher than the rates from remote lumber towns in Missouri and southern Iowa which only indirectly and casually compete with Eau Claire; nor does any suggestion come from the intervenors in this case which seems to counteract the force of the admission made by Mr. E. P. Ripley, Third Vice-President of the Milwaukee road, that "there are no dissimilar conditions existing at Winona, La Crosse and Minneapolis, as compared with Eau Claire, which would justify the charge of a higher rate per car per mile on lumber from Eau Claire to Missouri river points than from the points first

named, except that they are farther from the supply, and it costs more to get the logs there." This statement seems to us a confession of injustice to the shippers of Eau Claire, which is neither explained nor excused by any facts bearing legitimately upon the rates in question. The discrimination is admitted, and stands without adequate defense.

If rates from different points of shipment to common terminals could properly be fixed on the basis of mileage, there would be great persuasiveness in the argument of the learned counsel for the Atchison road, who contends that the relief, to which he virtually concedes Eau Claire is entitled, can be effectively secured only by increasing the rates from La Crosse and Winona. But charges for distances greatly dissimilar cannot be adjusted on that principle, and it furnishes no practical rule for establishing rates from different places unequally remote from the same destination. It may be that the rates from these northerly towns are generally too high in comparison with the rates from lower Mississippi points, but that question is not before us, and we have no occasion to consider it in this proceeding. The distinct issue now presented is the relative reasonableness of the Eau Claire rate, and that must mainly be determined by comparing it with the rates from neighboring towns similar in size, situation and volume of competing traffic, and at approximately the same distance from common markets. Bearing in mind, also, that since this investigation was commenced all these rates have been advanced by an addition equal to fifty per cent. of the rate upon which the others are based, viz., the ten-cent rate from Chicago to the Missouri river, we deem it quite unsuitable to attempt the correction of the inequality complained of by ordering a further advance in the rates from competing points in the vicinity of Eau Claire. For this reason it is unnecessary to discuss the power of the Commission, in dealing with discriminations between different localities, to require an increase in rates deemed relatively preferential.

The further general argument against a reduction of the Eau Claire differential does not persuade us that the present rate should be continued. This impression involves some



consideration of the Bogue award as it affects the town making this complaint, and the consequences to be apprehended from lowering the lumber rate at that point. The most noticeable fact in this connection is that the results apparently experienced do not accord with the principle upon which that award avowedly proceeds. Mr. Bogue expressly declares the question to be: "What rate will enable each line party to this arbitration to place its fair proportion of lumber in the territory under consideration?" This appears to us equivalent to asking, "What rate will enable each town in this territory to place its fair proportion of lumber in the common markets?" For the arbitrator surely did not intend to imply that a "line" which, as compared with some rival road, gets its "fair proportion" of lumber tonnage, taking into account the aggregate shipments from all the towns which it serves, may so discriminate *between those towns* as to stimulate production at one and prevent it at the others. The Milwaukee road, for instance, may have a "fair proportion" of the lumber business under the present schedule, but that circumstance furnishes no reason for favoring La Crosse and Winona at the expense of Eau Claire. It could not have been the design of Mr. Bogue to equalize this traffic between the railroads without regard to the interests of competing localities, and his award does not appear to have been so interpreted by the carriers. What he evidently intended was that lumber should cost the producer approximately the same *when delivered at destination*, whether manufactured at one place or another. Increased charges for transportation were to offset advantages of location or other natural facilities for cheap production. In this way the tonnage was to be fairly divided between the roads, and the prosperity of all these towns secured by enabling them to compete on an even footing in the common markets. But the rate prescribed for Eau Claire hardly permitted a result consistent with this theory. As it seems to us, this town has been placed at a manifest disadvantage. So far from enjoying equal opportunity with its rivals, it appears to have been overweighted with a differential which has excluded it, to a great extent, from the field of competition. A number of its establishments



have gone out of business, its industrial deveopment has been checked and its population seriously diminished. While neighboring towns have been prosperous, Eau Claire has not held its own. These adverse consequences may not have been caused by the operation of the Bogue award, but no other explanation is suggested. Obviously, such an outcome was not designed, and the fact that it has occurred indicates an injustice to this locality which ought to be corrected.

We are not to be understood as indorsing the principle which governs that award. On the contrary, we consider it radically unsound. That rates should be fixed in inverse proportion to the natural advantages of competing towns, with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and any exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute. There is no occasion for enlarging upon this point, as it is only incidentally involved in the discussion. Our chief object in commenting on the Bogue award in this connection is to draw attention to the fact that its declared purpose, so far as Eau Claire is concerned, has not been accomplished. Its effect upon that town has proved oppressive. Even if we could accept the theory upon which it is based, we should still be convinced that the rate fixed for Eau Claire was excessive, because its operation has prevented that town, as it seems to us, from retaining its "fair proportion" of the lumber business. As no such result was intended, the rate which produced it cannot be upheld by the rule adopted.

This criticism of the Eau Claire differential carries with it no general impeachment of Mr. Bogue's decision. On the contrary, his award deserves great commendation. It was an intelligent and conscientious judgment, and shows a keen appreciation of the difficulties to be overcome. It is not surprising that a trial of eight years should disclose grounds for complaint on the part of one locality; the real surprise

is that a schedule of rates was then devised which has since been observed by so many roads and proved fairly acceptable to so many communities. Its correction at this time in a single particular is no discredit to its general excellence.

We are unable to discover how other localities can reasonably object to a more equitable rate for Eau Claire, and our belief is that apprehensions based on a reduction at that point are not well founded. Relatively lower charges may enable Eau Claire to increase its lumber production, but that this will result in serious injury to competing towns is an unwarranted assumption. Remote places on the lower Mississippi can scarcely be affected by the removal of inequalities between Eau Claire and its neighboring rivals, and the latter cannot justly complain because the former is accorded a rate fairly proportioned to their own. The relative volume of lumber shipments from La Crosse and Winona may be somewhat reduced by lower charges at Eau Claire, but any such effect will be attributable to natural advantages of which that town cannot justly be deprived. In short, we see no reason why justice to Eau Claire should work injustice to any other community, much less result in the general disturbance of an established industry.

Nor will any such consequences follow a reduction of the Eau Claire differential as would justify other carriers in lowering their rates at competing points, for the purpose of preserving the co-relation of rates created by the Bogue arbitration. Undoubtedly these roads have it in their power to continue the present disparity, but we do not anticipate, and certainly cannot assume, that they will resort to such inconsiderate and arbitrary action in order to nullify the lawful order of this Commission. Even if we believed otherwise, it would still be our duty to render a decision in accordance with our convictions, and thus place the responsibility upon them, if they should attempt to defeat our ruling.

A further position was taken in this proceeding which is apart from the merits of the principal issue. The roads which were made parties at the request of the original defendant insist that no case has been made against them, and that the Commission has no authority to include them in any

order based upon the complaint of Eau Claire. We are disposed to agree with this contention. The sole complaint in this case is discrimination, and Eau Claire is the sole complainant. It is not easy to see how any carrier can "discriminate" against a town which it does not reach, and in whose carrying trade it does not participate. None of the roads so brought into the case run to Eau Claire, or engage, even indirectly, in the transportation of lumber from that point. Of what offense *against that town* can they be legally guilty? It would be quite absurd to charge a railroad with giving preference or advantage to a community which it does not serve, and it is equally illogical to say that it can prejudice or discriminate against such a community. All these terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. These views are so fully concurred in by counsel for the respective parties that further argument is unsuitable. They lead to the conclusion that no order can properly be made in this proceeding against the roads which do not run to Eau Claire. This determination must also include the intervening manufacturers and dealers, who have obviously no standing in the case independent of the lines which extend from their respective localities. It does not follow that these roads will be legally free to reduce their rates at other points to correspond with any lower rate which may be fixed for Eau Claire. They have responded to the demand that they should defend the differential complained of, and they have endeavored to justify it by evidence and argument. They have presented their case and will be formally notified of our decision. While they are not legally connected with the rate claimed to be excessive, and not technically subject to an order for its correction, they will have no better right to render it ineffectual than they would have to openly disregard a direction clearly within the scope of our authority.

The attitude of the Omaha road is somewhat peculiar. It was not proceeded against originally, and the Milwaukee Company did not ask to have it made a defendant. It voluntarily sought an opportunity to oppose the complainant, and was made a party on its own application. After engag-

ing in the litigation with considerable vigor, it now earnestly asks to be exempted from any order reducing the Eau Claire differential. These circumstances might well justify us in denying this request, but we incline to the opinion that it should be granted. Measured by the lumber rates which it maintains at other places on its line, the Omaha road cannot be said to discriminate against Eau Claire, nor is it charged with enforcing rates at different points which are relatively unequal. For this reason much embarrassment might result to that company from an order requiring it to reduce its rate at the place in question, and as such an order is not demanded by the complainant or deemed necessary for the relief which it seeks, we are disposed to leave that carrier the option of accepting the Eau Claire rate prescribed for the Milwaukee Company or going out of the Eau Claire business. No order, therefore, will be made against the Omaha road at this time, but the case will be held as against that company for such direction as may hereafter seem to be required.

These are the general conclusions arrived at in this proceeding. The conflicting interests which we have investigated furnish material for more extended comment, and the discussion might be greatly prolonged. Minute analysis of testimony has not been attempted in this opinion, and many suggestions must remain unnoticed. In the view we take of the case much of the evidence is immaterial, and enough has been said to indicate the principal reasons which have influenced our decision. We hold that the lumber rates in question discriminate against the shippers of Eau Claire, and that such discrimination is unjust and unlawful. The undue prejudice and disadvantage to which Eau Claire is thus subjected consists generally in the lower relative rates accorded to competing towns, especially those granted to La Crosse and Winona, and the complainant is entitled to an order correcting the inequality between these rival places.

The extent to which the Eau Claire differential should be reduced has been the subject of much deliberation. We have not considered it as an abstract proposition, based on mileage and cost of service, but have endeavored to make

proper allowance for other existing circumstances and actual conditions. It is our desire to prescribe a rate which will be reasonably just to Eau Claire, and which the Milwaukee road will be fairly satisfied to accept. No mathematical rule has been followed and no particular theory applied, but that rate has been selected which, on the whole, best satisfies our judgment. To a certain extent our determination is arbitrary, but equally so is the fixing of a rate in the first instance. As the injustice which Eau Claire suffers arises mainly from the lower rates at La Crosse and Winona, the rate from the former should bear a fixed and permanent relation to the rates from the latter, independent of the Chicago rate upon which all the others are based under the Bogue arbitration. Taking everything into account, we think the rate from Eau Claire should not exceed the rate from La Crosse and Winona by more than 2 cents per hundred pounds, when the latter rate is not over 11 cents per hundred; and that such excess over the present rate of 16 cents from La Crosse and Winona should not be greater than  $2\frac{1}{2}$  cents per hundred. Compared with the 16 cent rate now in force at these competing towns the rate thus fixed for Eau Claire will be higher by \$8.75 per car; and the rate per car per mile and per ton per mile to the several Missouri river markets will still be considerably greater from Eau Claire than from La Crosse or Winona. All things considered, however, we believe that an addition of  $2\frac{1}{2}$  cents to the present rate from those places will not be unjust to Eau Claire, and that a greater reduction in the differential now in force against that town should not at this time be required. If the operation of this rate fails to give equitable results, the complainant will not be debarred from making a further application for relief.

For the purposes of the formal order in this case, the sixteen cent rate from La Crosse and Winona will be assumed to continue; in case that rate is materially reduced, a proportionate reduction should be made in the difference or excess hereby allowed in the rate from Eau Claire.

The order of the Commission is, that from and after the tenth day of July, 1892, the Chicago, Milwaukee & St. Paul Railway Company cease and desist from charging, collecting

or receiving for or on account of lumber transported by it, in carload quantities, from Eau Claire, Wisconsin, to the various Missouri river points mentioned in this report, any greater sum or amount than two and one-half cents per hundred pounds more than shall or may from time to time be charged, collected or received by that company for the like transportation from the towns of La Crosse and Winona aforesaid.

(No. 300.)

THE ANTHONY SALT COMPANY *v.* THE MISSOURI  
PACIFIC RAILWAY COMPANY.

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(No. 301.)

THE ANTHONY SALT COMPANY *v.* THE ST. LOUIS  
& SAN FRANCISCO RAILWAY COMPANY.

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(No. 302.)

SAMUEL MATTHEWS *v.* THE UNION PACIFIC RAIL-  
WAY COMPANY, THE MISSOURI PACIFIC RAIL-  
WAY COMPANY.

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(No. 303.)

SAMUEL MATTHEWS *v.* THE ATCHISON, TOPEKA &  
SANTA FE RAILROAD COMPANY, THE CHICA-  
GO, SANTA FE & CALIFORNIA RAILWAY COM-  
PANY, THE GULF, COLORADO & SANTA FE  
RAILWAY COMPANY.

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(No. 304.)

EDWARD E. BARTON *v.* THE CHICAGO, ROCK ISLAND  
& PACIFIC RAILWAY COMPANY.

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Complaints filed May 29, 1891.—Answers filed June 16 to November 5, 1891.  
—Heard June 18, 1891.—Briefs filed November 27, 1891, to March 12,  
1892.—Decided April 23, 1892.

1. The continued reduction of relative rates when brought about by the removal of artificial and unnatural differences is not undesirable, but where the difference results from dissimilar circumstances and conditions, and the true difficulty appears to be a real and natural advantage which the one region has and enjoys over the other, such continuing disturbances of rates ought not to be inaugurated, especially when the charges are commodity rates not shown to be unreasonable in themselves.
2. Salt requires and gets a commodity rate lower than class rates, and the roads should only be limited as to such lower rating by the rule that a commodity shall not be carried at such unremunerative rates as will impose burdens upon other articles transported to recoup loss incurred in carrying that commodity.
3. On complaints of relatively unreasonable and discriminating rates on salt from Kansas fields to various points as compared with rates to the same points from the salt fields of Michigan: *Held*, That any advantages which inure to Michigan salt manufacturers from rates to points in Iowa, Illinois, Missouri and Nebraska are advantages arising from natural situation, and that the low rate to Missouri River points is influenced by conditions which are beyond the defendant's control, and existed before Kansas salt was discovered. *Held, further*, That rates on salt to points south and southwest of Hutchinson, Kansas, and St. Louis, Missouri, do constitute undue preference in favor of Michigan as against Kansas salt, and that they should be readjusted by the Santa Fe company so that, while observing the law as to the long and short haul, the advantages of distance belonging to Kansas salt fields shall be given to them in any territory supplied by its lines which lie as near or nearer to Hutchinson than St. Louis.

*Swigart, Martin & Crawford; Traber, Vandever & McNeil; and James Humphreys*, for complainants.

*Britton & Gray*, for Atchison, Topeka & Santa Fe, Chicago, Santa Fe & California, Gulf, Colorado & Santa Fe, and St. Louis & San Francisco Railway Companies.

*John S. Blair*, for Missouri Pacific Railway Company.

*T. S. Wright and M. A. Low*, for Chicago, Rock Island & Pacific Railway Company.

*John M. Thurston*, for Union Pacific Railway Company.

*Joy, Morton & Co.*, Interveners protesting against the claim of the plaintiffs.



REPORT AND OPINION OF THE COMMISSION.

**McDILL, Commissioner:**

The general complaint made by all these plaintiffs is that the several defendants give an undue advantage in rates to the manufacturers of salt in and about Saginaw, Michigan, over that enjoyed by the manufacturers of salt at Hutchinson and other salt-producing points in Kansas. Some mention is also made of New York salt as being granted similar and undue advantages over Kansas salt.

Instances are given in the complaint, as follows:

Rate on Bay City, Michigan, salt to St. Louis, Mo.,	cts.
611 miles, per hundred pounds.....	10
New York salt pays to St. Louis, Missouri, 806 miles, per	
hundred.....	13
While Anthony, Kansas, salt pays to St. Louis, Missouri,	
575 miles.....	23½
Rate on Michigan salt from St. Louis, Mo., to Fairbury,	
Neb., per hundred pounds, distance 504 miles.....	15½
Hutchinson, Kansas, to Fairbury, Neb., 247 miles.....	19
Hutchinson, Kansas, to Ft. Madison, Iowa.....	23½
Chicago to Kansas City, Michigan salt.....	15
Michigan salt to Ft. Worth, Tex., 1,387 miles, per hund'd.	43½
Kansas salt to Ft. Worth, Texas, 427 miles, per hundred.	35½
Michigan salt, from Ft. Madison, Iowa, to Ft. Worth,	
Texas, 826 miles.....	35½
Hutchinson, Kansas, salt to Clio, Iowa, 372 miles, per	
hundred.....	23
Chicago to Clio, 373 miles, per hundred.....	15

The distances are set forth as given in the complaint; while not in all cases exactly as found from the records in this office, yet the differences do not materially affect the matter of complaint.

It is claimed that the defendants, by charging the rates above set forth and by making similar differences at other points, are violating the Act to regulate commerce, and a restraining order is sought. The defendants say substan-

tially, while generally admitting the statements of the plaintiffs as to rates, that those lines which make the rates complained of are other and different than those named as defendants; that defendants have no voice or part in making the rates from Chicago to the Mississippi and Missouri river points, nor from Bay City and the Michigan salt field to Chicago and St. Louis. That these rates were brought about by water competition, and other forces uncontrollable by any of the carrier lines, and adjusted and agreed upon long before the Kansas salt fields were discovered and developed, and that to make the charges sought by complainants would disturb the whole system of rates and result in a compulsory rearrangement of all rates from Chicago and East St. Louis westward; that many independent lines extend from Chicago and St. Louis westward and southward, which do not reach the Kansas salt points; that the requirement of the law as to long and short haul, greater volume of business on the eastern portion of the lines and greater number of empty cars going westward, and numerous other causes beyond the control of the carriers, have operated to fix rates. Those rates that are complained of from Kansas to southeastern Nebraska and other points are said by defendants to be reasonable, the service being in a sparsely settled country and necessarily made by circuitous routes and over branch lines, and also controlled by circumstances and conditions which are altogether dissimilar to those controlling the fixing of the Michigan salt rates. That the rate on salt is everywhere very low, it being a commodity which will not bear any but very low rates. The defendants ask that the complaints be dismissed, or at least that, before any order is made, numerous carriers who will be affected by the order be made parties, and given an opportunity to be heard in reference to the nature and effect of the order prayed for.

By agreement of the several parties, these cases were heard together at Kansas City, Missouri, June 17, 18 and 19, 1891.

Upon the pleadings or written statements filed in these cases, the evidence introduced at the hearing, and the statistical and other information of record in this office, the following are found to be the facts:

### FINDING OF FACTS.

Salt is manufactured in great quantities in the northeastern part of the southern peninsula of Michigan. The principal points of that field are Bay City and Saginaw. Salt is also manufactured in large quantities in the southern and central parts of Kansas. Hutchinson, Kansas, is an important point in the Kansas field, but Anthony, Kingman, Sterling, Nickerson and Wellington are also prominent points.

The productive capacity of each field is practically unmeasured, and probably equal to any demand that is likely to exist for the product in regions within reach of either.

The cost of producing the salt and putting it in the barrel ready for shipment, including the cost of the barrel, is estimated in the Kansas field at from 60 to 70 cents. The cost is probably about five cents per barrel less in the Michigan field. A salt barrel weighs about 20 pounds and contains about 280 pounds of salt.

The cooperage materials from which salt barrels are made for use in Kansas come from Michigan and from the vicinity of the Saginaw salt region, being brought by rail to Kansas. The fuel used at the Kansas salt fields is slack coal brought by rail from various points in southeastern Kansas and northwestern Arkansas. The Michigan salt manufacturers get their cooperage material from near the salt plants. In some instances they use as fuel the slabs and refuse from saw-mills. When they use coal, they get it principally from Cleveland and other lake points. This coal costs more than the slack used at the Kansas plants. The Kansas brine is much stronger than the Michigan, and the Kansas wells are not so deep. All things considered, it would seem, there is but little difference in the cost of getting salt ready for market at the two points, the advantage, if any, being with the Michigan salt.

The production and output of salt in Michigan, began in 1861; the amount that year was..... 125,000 barrels.

In 1875 ..... 1,000,000 “

In 1890..... 4,000,000 “

—and Michigan now produces a very large portion of the salt supply in the United States.

Kansas salt production began in 1888, and for the year ending March 31, 1891, it reached 1,000,000 barrels. The area of territory embraced in the Kansas salt fields is large, being from east to west about 75 miles, and from north to south about 150 miles. The quality of it is good. Great quantities of salt are produced in other parts of the United States, namely, in New York, in the valley of the Ohio, in Louisiana, in Texas, and in Utah.

The United States annually consumes about 12,000,000 barrels of salt.

Salt from Michigan and New York reaches St. Louis and Chicago at very low rates. The St. Louis rate on Michigan salt exceeds the Chicago rate in the amount of  $3\frac{1}{2}$  cents per hundred, or 10 cents per barrel. On New York salt the rate varies during the year, the St. Louis rate being at all times from 3 to 4 cents per hundred more than to Chicago, according to the season of the year.

Great quantities of Michigan and New York salt are stored at all times at Chicago and St. Louis for distribution south to Texas points, and west to the country lying between the Mississippi river and the Rocky Mountains.

The average rate per ton per mile on salt from Michigan to points in Indiana, Ohio, and Illinois, and to East St. Louis, is .50 of a cent, and the rate to the same points from New York is  $.37\frac{1}{2}$  of a cent.

A number of lines reach Texas points, and the western country, east and west of the Missouri river, which do not reach the Kansas salt fields.

The Chicago, Rock Island & Pacific line extends from Chicago in a southwesterly direction to the Kansas salt fields, crossing the Mississippi river at Rock Island and Missouri river at St. Joseph and Kansas City. It also has a line from the Kansas salt region through southeastern Nebraska to Omaha, thence easterly through Des Moines, Iowa, to Chicago.

The Atchison, Topeka & Santa Fe road, runs from Chicago to the Kansas salt fields, and also reaches points in Texas, and on the Pacific coast and intermediate points, through its leased and operated lines.

The Missouri Pacific road extends westward from St. Louis to the Kansas salt fields, and by some of its lines reaches Omaha and Lincoln, Nebraska.

The St. Louis and San Francisco extends westward from St. Louis to the Kansas salt fields and also southward into Texas.

The Union Pacific does not reach the salt region but by the Missouri Pacific receives Kansas salt at McPherson and Kanopolis, and carries to Omaha and other points west of the Missouri river.

In November, 1889, the question of rates on salt from Chicago and St. Louis, and from the Kansas region, was submitted to and settled by the award of an arbitrator as follows:

"On salt in car loads from Chicago to all Missouri river points, Kansas City to Sioux City, inclusive, per hundred pounds, 15 cents.

"From St. Louis and other Mississippi river points to Missouri river points, (the rate from Mississippi river points to Sioux City applying only to points north of Clinton,) per one hundred pounds..... 11½cts.

"From Hutchinson and other salt producing points in Kansas to Kansas City, Leavenworth, Atchison, and St. Joseph..... 11½cts.  
Nebraska City..... 16 cts.  
Omaha..... 16½cts.  
Sioux City..... 18 cts.

"Omaha and Sioux City not to have the rates, by routes, west of the Nebraska Division of the Missouri Pacific.

"From Chicago and Mississippi river points to points in Kansas, and Kansas salt producing points to points in Missouri, through rates are to be made by adding to the above rates to southwestern Missouri river points respectively the local rates from such points to destination.

"To all points in Nebraska west of the Missouri river, rates to be established from Chicago by the lines running from Chicago, and the same rates to be made from Hutchinson, subject to the condition that rates shall not be used which shall operate to reduce the Chicago rate."

The Missouri Pacific, and the St. Louis and San Francisco roads, connecting St. Louis with the Kansas salt fields, charge a rate in excess of the Missouri river rate to points as far as Sedalia and Lebanon respectively less than the sum of the locals, and to points further east the rates are made of the sum of the locals.

On account of conditions which have heretofore influenced the rates to the Mississippi and Missouri river points and points between, Kansas salt is excluded from all points in Missouri and Iowa between the Mississippi and Missouri rivers, except Kansas City and St. Joseph. The same is true as to other points, as to Michigan salt, which by the adjustment of rates, is practically excluded from St. Joseph and Kansas City.

The tonnage east bound on the defendant lines greatly exceeds the tonnage west bound.

The amount of freight passing over the Rock Island bridge for the year ending March 31, 1891, east bound, was 23,000,000 pounds; west bound, 1,300 000 pounds.

The tariff sheets of the St. Louis & San Francisco road reveal the following rates:

Hutchinson east to Carl Junction, distance 225 miles,  $11\frac{1}{2}$  cents.

Oronogo, distance 231 miles, 13 cents.

Pierce City, distance 266 miles, 18 cents.

From St. Louis west to Hancock, distance 140 miles, the rate is  $11\frac{1}{2}$  cents.

Lebanon, 182 miles, the rate is  $13\frac{1}{2}$  cents.

Springfield, 237 miles, the rate is  $15\frac{1}{2}$  cents.

Pierce City, 287 miles, the rate is  $15\frac{1}{2}$  cents.

Oronogo, 322 miles, the rate is  $15\frac{1}{2}$  cents.

On the Atchison, Topeka & Santa Fe line rates are made to Texas points as follows:

	Per ton per mile.
Hutchinson to Fort Worth, a distance of 427 miles, rate $35\frac{1}{2}$ .....	1.662
Ft. Madison to Ft. Worth, 826 miles, rate $35\frac{1}{2}$	.859
Chicago to Ft. Worth, 1,065 miles, rate $41\frac{1}{2}$ ...	.779
Bay City to Ft. Worth, 1,388 miles, rate $43\frac{1}{2}$ ...	.625

At Anstin, distance from Hutchinson 669 miles, the rate is 35½ cents, or 1.061 cents per ton per mile, while Michigan salt is given a rate from Ft. Madison to Austin, 1,069 miles, of 35½ cents, or .664 of a cent per ton per mile.

Relative differences of a kindred character are found in the charges for transporting the product manufactured at the two points to Houston, Galveston, Laredo, San Antonio, Nacogdoches and San Angelo, the advantage in the rate per ton per mile being at all times in favor of the Michigan salt. The question raised is one of relative rates and resulting discrimination which is claimed to be unjust, because it is said to bring about an undue preference of the Michigan region over the Kansas region both engaged in manufacturing salt, and to result in prejudice to the Kansas locality. The giving of undue or unreasonable preference or advantage of any particular locality over another, or subjecting any particular locality to any undue or unreasonable prejudice or disadvantage as to any other locality, is declared in section three of the "Act to regulate commerce" to be unlawful. The facts are scarcely in dispute. It is practically conceded that salt transported from Michigan, south and west, has more favorable rates than salt transported from Hutchinson and other points in Kansas, north, south and east; but defendants say that they are not responsible for the rates on Michigan salt. Its transportation, they allege, is forced to a very low mark by causes outside of any territory occupied by their lines, and where such forces are at work as to make a dominating necessity for the maintenance of present low rates, which have been established (for a long time acquiesced in) and regarded as absolute necessities for the work of transportation, in such manner as to secure the greatest good to the greatest number. That therefore, the rates complained of are, even if in violation of the law, not the acts of these defendants. They however, insist that the rates given the Michigan salt are reasonable, proper, and necessary; that the conditions and circumstances of controlling force and effect are dissimilar in reference to the two localities brought into question, namely, the Michigan and the Kansas salt fields, and finally, if there



should be found a necessity for readjustment of rates, that it can only be done by making parties to the proceedings all lines interested by location and actual traffic operations in the business of either locality, with reference to the salt shipped therefrom, and carried to market over such carriers' lines.

A comparison of rates is invoked by these complaints, between rates on salt manufactured in Michigan and moving south and west, and rates on salt manufactured in Kansas and moving north and east. The commodities shipped, though similar in quality, are moving in a different, not the same direction.

From the fact that in the one case the product moves south and west to market, and in the other north and east, it follows that the lines serving in part the two localities run through differently situated countries; the one sparsely settled and not furnishing a very large local trade, the other more thickly settled, furnishing a larger local trade and a greater volume of business. The lines leading from the Michigan salt region, besides the advantages just mentioned, have been forced, it is claimed, to make lower rates than would probably have been acquiesced in under other conditions, on account of water competition. And these rates were established before the Kansas salt fields were discovered; so that, it is evident, that at the time of their establishment there could have been no intention to unduly prefer the Michigan salt region, as compared with the Kansas salt region.

Not only is it claimed that water competition has lowered rates for the Michigan salt, but that certain other established conditions have had the same tendency. These as set forth are, the great volume of business moving west and south from Chicago over the lines carrying Michigan salt, the heavy preponderance of east-bound freight over west-bound, principally caused by the large number of stock, or cattle and grain cars used in transporting live stock and grain from western states and territories to Chicago and eastern points, thus throwing upon the lines terminating at Chicago large numbers of empty grain and cattle cars, which must return as empties to the west, unless some product can be loaded into these cars



and transported west at a rate slightly remunerative. It is evident that these conditions have powerfully aided the Michigan salt in obtaining a low rate on its western and southern haul. These dissimilar circumstances and conditions are mentioned in section two of the Act to regulate commerce as matters to be considered. The proposition of the law seems to be that, where the circumstances and conditions of two localities are substantially similar, there shall be no advantage or preference given to one which is not also freely offered to the other. To give an advantage or preference, under such circumstances, to one place would be undue, or in other words, would be giving to the favored locality an advantage which did not of right belong to it, and producing an undue prejudice against the other locality.

It was urged with earnestness by the complainants, that the proof was that a great number of empty cars from Colorado and westward of Hutchinson and Kansas salt points were to be found in the region of these points, which could be conveniently and profitably loaded with salt and sent eastward; but, in our judgment, the force of this reasoning is broken by the fact that Hutchinson and the salt points of Kansas are within the grain belt, and the demand for grain cars during a considerable part of the year, is greater than the supply; that, loaded with grain, these empties would yield a profit on the eastward haul which would be in excess of the profit on salt. To require carriers to take an unremunerative commodity, which demands a rate lower than the classes, in preference to another article, which also takes a commodity rate but will yield a greater profit to the carrier than the carriage of the former commodity, might be an unjustifiable requirement, as revenues should not be arbitrarily reduced.

So far as the rate on Michigan salt from Bay City to Chicago is concerned, it appears it was originally charged 33 cents per barrel, but this rate was reduced to 20 cents per barrel prior to the discovery and development of the Kansas salt, and has for a long time been the fixed rate.

The difference in charge for transportation of freight to St. Louis over the charge to Chicago is and seems to have

been for a long time prior to the discovery of the Kansas salt fixed, as claimed by the railways, upon the following rule: That St. Louis should have a rate from the east as much greater than the Chicago rate as its rates westward, along distributing lines, were less than the Chicago rates on its distributing lines, thus placing the two cities upon an equality as distributing centres. The Michigan salt reaches the Mississippi river at a rate apparently compulsory in its character on the entire line from the field of production either direct from Bay City or *via* Chicago. Forces beyond the control of the defendants have fixed this rate, and they must carry at this rate from Chicago to the Mississippi river, or go out of the business. Other great advantages here concur in favor of the Michigan salt moving from Chicago. These are, great numbers of west-bound empty cars, facilities for speedy loading of cars, and a minimum time of idleness for the unloaded cattle cars coming in from the west. Coal is cheaper in the region of supply for the eastern portions of the Rock Island and Atchison lines than the western portions.

It cannot be urged that the defendants are responsible for, or that they have arbitrarily fixed, the rate on Michigan salt to either Chicago or St. Louis.

Nor can any comparison of rates from Hutchinson, Kansas, eastward to St. Louis with rates from Bay City to Chicago or St. Louis be of any advantage, for the conditions and circumstances are not substantially similar.

For these reasons, a comparison as to relative rates, if of any value, should be as between St. Louis and Kansas City on the one hand, and Kansas City and Hutchinson, Kansas, and the several Kansas salt points on the other hand. The distance from St. Louis to Kansas City is 283 miles. The rate on salt 11½ cents.

The distance from Hutchinson and the salt points to Kansas City is 235 miles. The rate on salt is 11½ cents. The shortest rail line distances from St. Louis to Kansas City is *via* the Wabash road, being 277 miles. This road does not reach the Kansas salt regions, nor is it a party defendant in this case.

The roads leading from Chicago to Kansas City cannot, as

rates are now arranged, charge more than the rate from St. Louis to Kansas City plus the difference between Chicago and St. Louis,  $11\frac{1}{2}$  cents plus  $3\frac{1}{2}$  cents, or 15 cents, the rate charged. If these roads charged more than 15 cents, all the Michigan salt would go *via* St. Louis, and they would carry none and would lose the profit of carrying salt.

It is claimed by the plaintiffs in this case, that the rate from Kansas salt points to St. Louis should be 15 cents, and that discrimination against Kansas salt consists in a rate of  $23\frac{1}{2}$  cents to that point, which was the rate at the time the complaint was made, it now being 18 cents.

It must be noted, however, that lines from Chicago reach Kansas City that do not reach the Kansas salt fields. For instance, the Chicago, Burlington & Quincy railroad reaches Kansas City, the distance being 499 miles, and by a route substantially the same it reaches St. Joseph, Mo., the distance being 471 miles, and carries salt to this point and others at a 15-cent rate, if it carries at all, that being the maximum rate it is able to charge.

The claim of the plaintiffs to be allowed a 15-cent rate to St. Louis, would, we think, disarrange and disturb relations of rates to places considered alone as to distance. If salt were carried from Kansas salt points to St. Louis for 15 cents, a distance of 512 miles, while Michigan salt pays  $11\frac{1}{2}$  cents for going from St. Louis to Kansas City, a distance of 283 miles, it seems apparent that the shorter distance over the same line would pay a greater rate relatively than the longer distance. From St. Louis to Kansas City being 283 miles, if it be conceded that  $11\frac{1}{2}$  cents is a proper rate for that distance, distance alone now being considered, then the additional 235 miles from Hutchinson to Kansas City should (distance alone now being considered) pay for the additional haul  $11\frac{1}{2}$  more, or a rate of  $23\frac{1}{2}$  cents, and this was the precise rate charged at the time of complaint, now being 18 cents. If the rate asked by plaintiffs were established and the rate on Michigan salt were continued as at present, namely,  $11\frac{1}{2}$  cents for the 283 miles from St. Louis to Kansas City, a continuance of which latter rate is contemplated by defendants, then at a 15-cent rate for Kansas salt from Hutchinson to St. Louis

there would only be left to pay for the distance hauled to Kansas City, which is 235 miles,  $3\frac{1}{2}$  cents per hundred, or the rate would be less for hauling practically the same distance west of the Missouri river than charged for the same distance east of the Missouri river, and this low rate would be established, being low and unequal, on freight passing eastward on a line running through a sparsely settled country, which often suffers for want of a sufficient number of cars to carry its grain and other products eastward, and on a line which had a great number of empty cars moving westward. The effect of such a rate upon the lines which extend into the country west of the Missouri river from Chicago, but which do not reach the Kansas salt fields, could not be otherwise than disastrous and disturbing.

Being forced either to abandon salt transportation, or to meet the lowered salt rate from Kansas, such lines would, if any appreciable margin of remuneration were left at the lower rate, undoubtedly choose the latter alternative. This would again destroy the equilibrium of rates, and Kansas salt would be in a position to demand another reduction, which, if granted, would call for another lowering of rates from Chicago westward and so on indefinitely. Now, while this would not be undesirable, when brought about by the removal of artificial and unnatural differences, yet when the difference is, as in this case, one resulting from dissimilar circumstances and conditions, and when made to operate on commodity rates, concerning which no one has in this case shown that they are unreasonable or high rates, it does not appear to be right to inaugurate such continuing disturbances, when the real difficulty seems to be a real and natural advantage which the one region has and enjoys over the other.

Again; it is urged that great discriminations are shown in the rates, and they are so arranged as to exclude western or Kansas salt from a field which otherwise could be reached from Kansas, and instances are given, as follows: Hutchinson to Trenton, Mo., 335 miles, rate  $20\frac{1}{2}$ ; Chicago to Trenton, Missouri, 416 miles, 15 cents; Chicago to Clio, Iowa, 375 miles,

15 cents; Hutchinson to Clio, Iowa, 378 miles, 23 1-6 cents; and many other instances might be given, but the defendants reply that such apparent anomalies are forced by the requirements of the Act to regulate commerce as to the long and short haul.

The maximum rate to the Missouri river, as we have shown, is fixed by forces beyond the control of the defendants at 15 cents. Whenever a point is reached on the lines leading from Chicago westward where the rate made up of locals, or in any manner based on distance, equals the fixed rate of 15 cents, the additional miles hauled cannot be counted for the purpose of increasing the rate, for the law prohibits the greater rate for the shorter haul over the same line in the same direction. It is then apparent, that if any wrong is done by the differences complained of, it must be found in the rate from Hutchinson east. As we have already seen the rate in this direction, being uncontrolled by any such forces as act upon the westward movement from Chicago to the Missouri river, may be considered as the basis of an inquiry, whether the rate charged is reasonable and just under all the circumstances.

The following table shows the rate per ton per mile from Hutchinson to the several points named :

To Trenton, Mo.....	.01233
To Marysville, Mo.....	.01352
To Clio, Iowa.....	.01224

Michigan salt reaches these points under circumstances, as we have before shown, advantageous to it, and compulsory upon the carriers.

We therefore feel compelled to conclude, that any advantages which would seem to inure to Michigan salt over Kansas salt, are advantages arising from situation, and not advantages unduly given by the defendant.

Complaint is made against the Union Pacific and Missouri Pacific with regard to rates on Kansas salt into Nebraska, as compared with Michigan salt rates. To understand this situation, it must be remembered that the difference in favor of St. Louis operates, in this field also, in favor of Michigan salt.

Those lines carrying directly west from Chicago, which do not reach the Kansas salt fields, are compelled either to carry salt at a very low rate to Nebraska, or go out of the business.

The Missouri Pacific reaches Omaha by a circuitous route through Beatrice and Lincoln, and the Omaha rate on Kansas salt is, as shown by the evidence, 15 cents.

But the Union Pacific and the Missouri Pacific carry to Fairbury, Neb., as follows:

- By the Missouri Pacific . . . . 55 miles to Kanopolis.
- By the Union Pacific . . . . . 99 miles to Manhattan.
- Branch of the Union Pacific . 56 miles to Marysville.
- Branch of the Union Pacific . 40 miles to Fairbury, Neb.

—  
Total distance . . . . . 250 miles.

The rate by this route on Kansas salt, is 19 cents per hundred pounds. This is a special rate and groups both points of shipment and destination and is not made up of the sum of the locals. The rate to several points in Nebraska, with distance from Kansas salt field is given.

Rate on salt in barrels from Hutchinson, Kingman and Anthony, Kansas.

To	Distance from Hutchinson		Rate per 100 pounds.
	<i>via</i> Kanopolis.	<i>via</i> McPherson.	
Fairbury, Neb. . . . .	250	226	19
McCool Junction, Neb. . . . .	301	277	19
Hastings, Neb. . . . .	324	300	22
Grand Island, Neb. . . . .	349	325	22

Tobias, Fairmount, Osceola, David City, also have a 19 cent rate.

The mileage rate on the above combination route of Missouri Pacific and Union Pacific would be

Hutchinson to Kanopolis . . . . .	11½
Kanopolis to Fairbury, Neb. . . . .	24
	—
	35½

The rate given to Fairbury is 16½ cents below the sum of the locals, and is an evident concession to Kansas salt; and,

in every specific instance called to our attention, the rate made is the equal of the Chicago rate to the same point. But in every such case St. Louis has a rate  $3\frac{1}{2}$  cents per hundred better. Complainants wish to have a rate to Nebraska points 5 cents less than Chicago and  $1\frac{1}{2}$  cents less than St. Louis. If this were done, or a rate less than the Chicago rate given, those roads extending from Chicago into Missouri and Nebraska, but not reaching the Kansas salt fields, would be compelled either to go out of the business of carrying salt, or to lower the rate from Chicago, which would involve a complete readjustment of rates on salt, both east and west bound, after every such reduction.

But even such results might afford no reason why an unreasonably high rate should not be reduced. Yet upon consideration, we are not able to declare that the rates on Kansas salt to Nebraska points are unreasonably high. The evidence shows that the cost of the haul from Hutchinson to St. Louis is about 5.2 mills per ton, and that 15 cents to St. Louis would be the cost without any appreciable margin of profit, and that if east bound cars during the season of grain shipments were diverted from grain to salt transportation, it would bring about serious financial loss to the grain carrying roads. Salt is an article which requires and gets a commodity rate lower than class rates, and the general rule applicable thereto would seem properly to be that, if it has been placed at commodity or lower than class rates, the only limitation upon the roads should be that the commodity should not be carried at entirely unremunerative rates, so as to impose burdens upon other articles of transportation to recoup loss incurred in carrying the commodity.

When we come to a consideration of the evidence as to the rates on salt from Michigan to Texas, as compared with Kansas salt shipped to the same points, we find rates that we cannot approve. The Atchison, Topeka & Santa Fe road has a line running from Hutchinson in the Kansas salt fields to points in Texas. This line extends from Hutchinson in a general southerly direction.

The salt fields of Kansas lie nearer to some points in Texas



than does St. Louis, the distributing point in question for Michigan salt going south. The limitations and conditions which are brought forward as tending to control the rates on salt moving westerly from Chicago, do not control the movement of Hutchinson salt southerly along the line to Texas points.

The Gulf, Colorado & Santa Fe Railroad Company is controlled by the Atchison road, through the ownership of a majority of capital stock. (See Statistics of Railways, 1889, page 55.)

The Chicago, Santa Fe & California Railroad Company is operated with the Atchison road as one property. (Statistics of Railways, 1889, page 53.)

The St. Louis & San Francisco Railway extends to the same southern and southwestern points, and is leased and operated by the Atchison road.

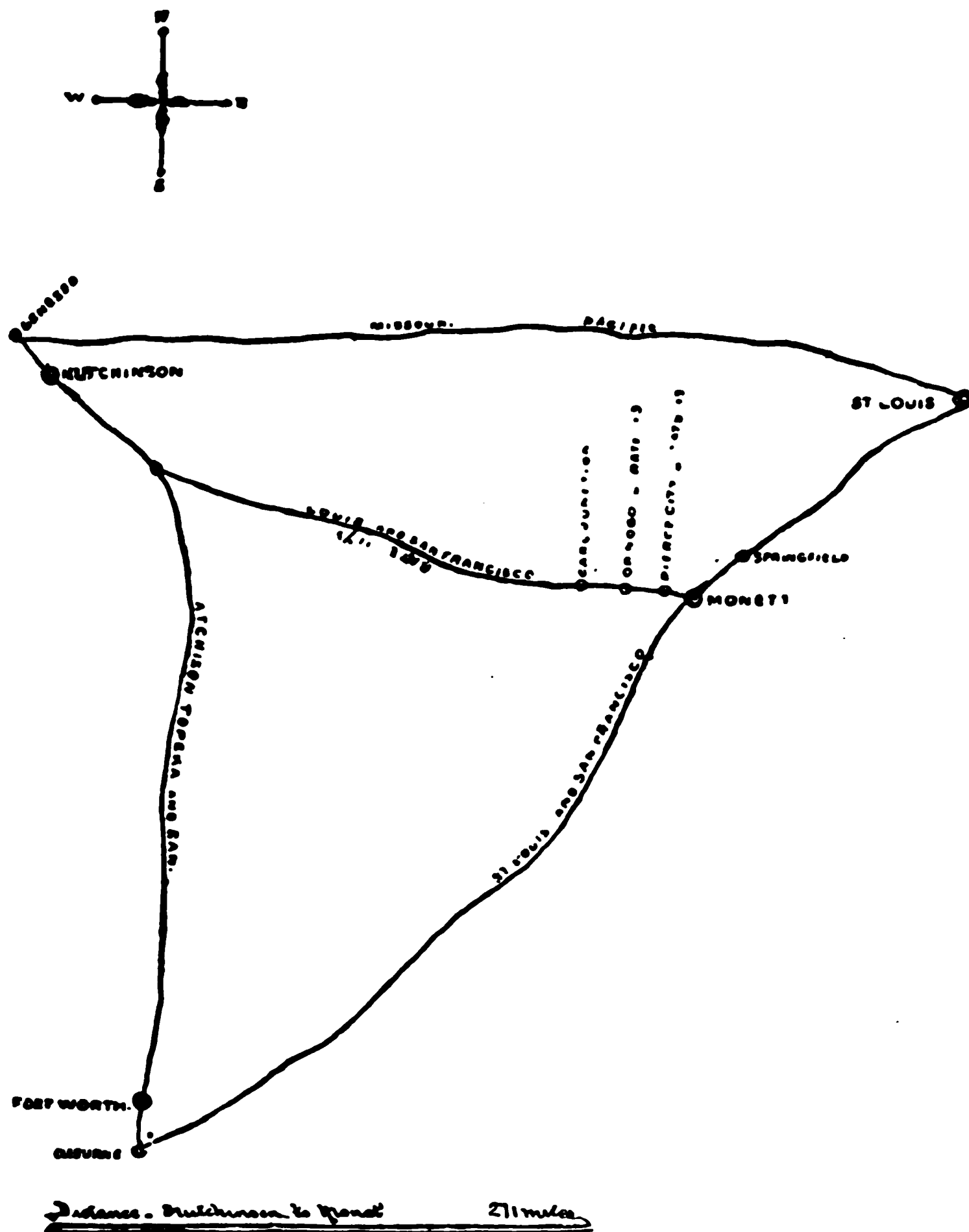
The Atchison has a direct line south from Hutchinson to Fort Worth, San Antonio and other Texas points. It has another direct line to the same points from St. Louis *via* the St. Louis & San Francisco road. The latter road has a line from Hutchinson southeast toward Springfield, Mo., and at Monett Junction it intersects the line coming southwesterly from St. Louis. The exact situation may be more clearly understood by the accompanying diagram on opposite page.

By a reference to the diagram, it seems that the consumers of salt are hedged away from the Kansas salt, on the line of the St. Louis & San Francisco Railroad, at Oronogo, and Pierce City not far from 250 miles distant from the field of its production, the distance from Hutchinson to Monett Junction being about 271 miles, while the Michigan salt from St. Louis has a clear way from St. Louis to Fort Worth *via* the Atchison line, and in turn the Kansas salt gets no relief from the direct line from Hutchinson to Fort Worth, for the reason that the rate on salt from St. Louis to Fort Worth is fixed at 35½ cents, while the rate from Hutchinson to Fort Worth is 35½ cents. Yet the distance from Hutchinson to Fort Worth is 427 miles, while the distance from Bay City, Michigan, to Fort Worth is 1388.

The rate from Bay City to Fort Worth, 1388 miles, is 43½



cents per hundred on salt, while from Hutchinson, Kansas, to Fort Worth, 427 miles, the rate is  $35\frac{1}{2}$ . The excess in haul from Bay City only pays 8 cents per hundred, and the excess is twice as great as the total distance from Hutchinson to Fort Worth.



As St. Louis is the distributing point for Michigan salt moving south and west, it would seem right to make the comparison between St. Louis and Hutchinson. St. Louis for the purpose of this inquiry may be treated as the point of

origin of Michigan salt, the cost of getting it to the distributing point being, perhaps, an element of the original cost of the article in preparation for market. St. Louis is 743 miles from Fort Worth, Texas; Hutchinson is 427 miles from the same point. If the common rate,  $35\frac{1}{2}$  cents per hundred, is the proper rate for the 427 miles haul from Hutchinson to Fort Worth, then the excess of haul from St. Louis to Fort Worth, which is 316 miles, without any reason shown in the record, is a carriage without charge. While many other considerations than distance may be considered in determining what shall constitute a proper rate, yet in this case nothing is shown to justify the apparent discrepancy of charge, and it is believed to work an undue preference to Michigan salt over Kansas salt going to Texas and southerly points.

It can hardly be disputed that there is here a disadvantage brought about to the Kansas, and a preference given to the Michigan, salt, both undue and unreasonable. It seems that this arrangement is wholly under the control of the Atchison Railroad and the lines leased and operated by it, and we see nothing in the situation, as proven, which can be given as a valid reason for not putting the Kansas salt fields in possession of all these natural advantages in the territory traversed by these lines. We think that, in all this territory, where the Texas points are as near to Hutchinson as to St. Louis, the Kansas salt should, by a re-arrangement of rates, be carried for an equal charge, and where Hutchinson is nearer than St. Louis, the Kansas salt should have the reasonable advantage of its proximity to the market, at all times, however, observing the requirements of the law as to the long and short hauls.

We find and conclude, with reference to all the other defendants, except the Atchison, Topeka & Santa Fe and its leased and operated lines, and with reference to that portion of *its* line leading directly from Chicago west, that the advantages given to Michigan salt, by which it reaches Chicago and East St. Louis, are advantages it enjoys by reason of its natural situation. That the advantage by which it reaches the Missouri river on a very low rate, is fixed by conditions beyond the control of the defendant roads, and that such

conditions existed by reason of the situation before the Kansas salt was discovered.

With reference to the Atchison, Topeka & Santa Fe Railroad and its lines, operated and leased, running from St. Louis and Hutchinson south and southwest, and connecting with such lines, the present adjustment of rates, we think, *does* operate so as to bring about an undue advantage to and undue preference of Michigan salt over Kansas salt, and said defendant, the Atchison, Topeka & Santa Fe Railroad is now advised that said rates as now adjusted are in violation of the provisions of section three of the Act to regulate commerce, and it is hereby ordered to desist from the enforcement of the present rates, and at once to re-adjust rates on its last-named lines, at all times observing the requirements of the law as to the long and short haul, so as to give the advantages of distance belonging to Kansas salt, in all the territories supplied by its lines, that lies as near or nearer to Hutchinson than to St. Louis, and the complaints against the Missouri Pacific Railroad Company, the Union Pacific Railroad Company, and the Chicago, Rock Island & Pacific Railroad Company are dismissed without prejudice.

It is found upon examination that the rate of  $23\frac{1}{2}$  cents per hundred pounds on salt from Hutchinson to St. Louis, a distance of five hundred and twelve miles, is equivalent to .91 of a cent per ton per mile.

The rate of  $35\frac{1}{2}$  cents per hundred pounds from Hutchinson to Galveston, a distance of seven hundred and seventy-two miles, is equivalent to .92 of a cent per ton per mile.

We have found that recently the rate on salt from Hutchinson to St. Louis has been reduced from  $23\frac{1}{2}$  to 18 cents per hundred pounds, or to .703 of a cent per ton per mile. On the same basis, the rate from Hutchinson to Galveston should be 27 cents per hundred pounds. Other Texas common points should receive the same rate. This would give the carriers from Hutchinson to Fort Worth 1.26 of a cent per ton per mile; to Galveston .703 of a cent per ton per mile.

Our belief that this rate is about the fair and reasonable rate is fortified by a consideration of the rates formerly and now in force upon salt from New Iberia, Louisiana, to com-

mon Texas points. These rates are shown in the accompanying table:

		In cents per 100 pounds, in sacks or barrels.			
Dis-	From Iberia, La.,	In effect	In effect Nov	In effect	Per ton
tance.	To	Dec. 15, 1890	18, 1891	Jan. 7, 1892.	per mile.
	Austin, Tex. . . . .	30.50	23.9	23.9	
	Corsicana, Tex. . .	30.50	24.7	26	
501...	Dallas, Tex. . . . .	30.50	25	26	1.02
523...	Fort Worth, Tex. .	30.50	24.5	26	.99
565...	Sherman, Tex. . . .	30.50	27.1	27.1	.97
	Terrell, Tex. . . . .	30.50	27.5	27.5	
422...	Waco, Tex. . . . .	30.50	24.3	26	1.23

It is found that the rate from New Iberia, La., to Fort Worth, Texas, was in December, 1890, 30.50 cents per hundred pounds and is now reduced to 26 cents per hundred pounds, and that the rate to Waco, distant from New Iberia 422 miles, is now 26 cents per hundred pounds, and the rate per ton per mile 1.23 of a cent. It would seem that the rate named by us has reached the common basis of similar rates. We therefore order and direct that the maximum rate on salt from Hutchinson, Kansas, to Galveston and common Texas points be fixed at 27 cents per hundred pounds so long as the rate on salt from St. Louis to Texas points is fixed at 35½ cents per hundred pounds, and that the relation and proportion be hereafter maintained between rates on salt from St. Louis and Hutchinson to Texas common points as hereby established.

Upon a distance basis alone the difference is still greater but undoubtedly there is greater volume of business from St. Louis and a more abundant supply of empty cars, which would justify a somewhat lower rate from St. Louis than from Hutchinson, which conditions although not measurable with mathematical exactness have been considered in fixing the above rate.

The cases seem to have been prepared with reference to the manufactured and barrelled salt, and the necessary facts and conditions with regard to rock salt are not found in the record to enable an intelligent determination with reference to rates upon that product. Statements are made in a brief

filed September 2, 1891, by the Lyons Rock Salt Company, that the competition of the rock salt is not with the Michigan but with the New York salt, and it is asserted that the production of rock salt in Kansas might be greatly increased if rates were properly adjusted. It is also claimed that the rates from New York salt points to St. Louis and Chicago are relatively much less than the rates from Kansas rock salt points to Chicago and St. Louis. The want of evidence upon the points claimed, the absence of any parties representing the New York salt interests, the fact that for aught that appears no railway line making the New York salt rates to Chicago and St. Louis is a party defendant, compel the conclusion that it would be unsafe for the Commission to attempt upon this record to consider the question raised by the brief. It may here also be noticed that the Lyons Rock Salt Company filing the brief is not a party plaintiff in any one of the cases under consideration.

It is therefore deemed right to say that nothing in this report and opinion is intended in any manner to apply to rates upon rock salt, or to any question of relative rates, upon comparison of rates of New York rock salt with rates on Kansas rock salt; the several parties interested in such products being left entirely free to whatever action they may deem wise, without being embarrassed by any action taken in these cases which have sole reference to questions of comparison between rates on manufactured salt made either in Michigan or Kansas and not to rock salt.

Some reference has been made in the briefs filed to a circular number 48 of the Western Traffic Association, dated Chicago, November 3, 1891, which shows an authorization by the Chairman of that Association to the lines embraced therein to make a through rate from Kansas salt points to Mississippi river points, Fort Madison to St. Louis inclusive, at some date to be fixed by the Chairman of the Association. It is contended that the circular is not properly in evidence, and, if it were, that it should have no weight in determining the merits of the controversy. It has not in fact been considered, but it is not the wish or purpose of the Commission in any manner to throw any obstacle in the way of any

attempt on the part of the lines connected with the Association to amicably adjust salt rates upon a better basis than the one now in use. In fact, we find the present rate on salt from Anthony, Kansas, to St. Louis is 18 cents, and we do not wish in the least to interfere with or disturb this rate. This rate now in force was established December 16, 1891, and applies to St. Louis and other Mississippi river points, and to intermediate points as far as Brant, 145 miles west of St. Louis.

In conclusion, it is perhaps due to the complainants that notice should be taken of their complaint that the Kansas salt rate to interior points in Iowa and Missouri is made by adding the local rate from the Missouri river points to destination to the rate from the salt points to the Missouri river points, while the rate from Chicago to central points in Iowa and Missouri is a single through rate.

We cannot regard the difference as of any great importance, the question being directly as to the relative rates, and not the manner in which they are made.

If, as has been heretofore shown, a reduction of the salt rate from Kansas points to points between the Missouri and Mississippi rivers would be inexpedient and unproductive of any relief to complainants, and no appreciable benefit to consumers, then it is immaterial how the rate is made, whether a single amount or by a combination of amounts. The conclusion reached after a comparison of two rates could hardly be changed, whether the rates under consideration were made as a single aggregate sum for the service, or by combining certain sums, whether locals or arbitrary amounts. The real inquiry is, whether the rates are in themselves high and unreasonable, or wanting in proportion and relation to other rates, and whether any actual benefit would inure to complainants by reason of reducing them. We are convinced, as already shown, that every reduction would bring about a corresponding reduction in the opposing rate, constant disturbance and fluctuation in rates, no benefit to complainants, probable reduction of revenue to carriers and no advantage to consumers.

Much has been said about grain rates, and comparisons made therewith. The rates on grain are, as shown by the records of this office, as follows:

Hutchinson to St. Louis,	{	Wheat, 25 cts	per hundred.
		Corn, 20 cts.	per hundred.
Hutchinson to Chicago,	{	Wheat, 30 cts.	per hundred.
		Corn, 25 cts.	per hundred.

There is no sufficient similarity between salt and grain to make a comparison in any degree instructive. Salt moves in quantities sufficient to supply the entire demand, from widely separated points of production to common intermediate points of consumption. Grain moves, as a rule, in one direction only to the general markets of the world, and the demand is practically unlimited. The markets for grain will usually absorb the entire supply, and the lowering of rates on grain inures largely to the producer of grain. A reduction in salt rates to the interior of Iowa and Missouri could not have such an effect. The market is necessarily limited. Disturbing rates would, as we have shown, lead to corresponding reductions as to the other competing field, so that a reduction will not give any profit, or any greater market in the end to the Kansas producers. Natural causes and forces ought to have full sway. The public mind has condemned what it has believed to be the attempt of railway managers to interfere with them. Commissions and other bodies in regulating transportation should, as far as possible, avoid the same error.

[No. 314.]

L. N. TRAMMELL, ALLEN FORT AND VIRGIL POWERS, CONSTITUTING AND COMPOSING THE RAILROAD COMMISSION OF GEORGIA, v. THE CLYDE STEAMSHIP COMPANY, THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY AND THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA, LESSEES OF THE GEORGIA RAILROAD, THE RICHMOND & DANVILLE RAILROAD COMPANY AND THE GEORGIA PACIFIC RAILWAY COMPANY, LESSEES OF THE CENTRAL RAILROAD OF GEORGIA.

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[No. 315.]

L. N. TRAMMELL, ALLEN FORT AND VIRGIL POWERS, CONSTITUTING AND COMPOSING THE RAILROAD COMMISSION OF GEORGIA, v. THE OCEAN STEAMSHIP COMPANY, THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, THE GEORGIA PACIFIC RAILWAY COMPANY AND THE RICHMOND AND DANVILLE RAILROAD COMPANY, LESSEES OF THE CENTRAL RAILROAD OF GEORGIA.

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[No. 316.]

L. N. TRAMMELL, ALLEN FORT AND VIRGIL POWERS, CONSTITUTING AND COMPOSING THE RAILROAD COMMISSION OF GEORGIA, v. THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY,



LESSEE OF THE CINCINNATI SOUTHERN RAILWAY, THE CINCINNATI SOUTHERN RAILWAY COMPANY, THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY, THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, THE GEORGIA PACIFIC RAILWAY COMPANY, AND THE RICHMOND & DANVILLE RAILROAD COMPANY, LESSEES OF THE CENTRAL RAILROAD OF GEORGIA.

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[No. 317.]

L. N. TRAMMELL, ALLEN FORT AND VIRGIL POWERS, CONSTITUTING AND COMPOSING THE RAILROAD COMMISSION OF GEORGIA, v. THE WESTERN & ATLANTIC RAILROAD COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, LESSEES OF THE CINCINNATI SOUTHERN RAILWAY, AND THE CINCINNATI SOUTHERN RAILWAY COMPANY.

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[No. 324.]

L. N. TRAMMELL, ALLEN FORT AND VIRGIL POWERS, CONSTITUTING AND COMPOSING THE RAILROAD COMMISSION OF GEORGIA, v. THE SOUTH CAROLINA RAILWAY COMPANY, THE GEORGIA RAILROAD & BANKING COMPANY, THE LOUISVILLE & NASHVILLE RAILROAD COMPANY AND THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA, LESSEES OF THE GEORGIA RAILROAD, THE RICHMOND & DANVILLE RAILROAD COMPANY AND

THE GEORGIA PACIFIC RAILWAY COMPANY,  
LESSEES OF THE CENTRAL RAILROAD OF GEORGIA, THE  
ATLANTA & WEST POINT RAILROAD COMPANY,  
AND THE WESTERN RAILWAY COMPANY OF  
ALABAMA.

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[No. 325.]

L. N. TRAMMELL, ALLEN FORT AND VIRGIL POW-  
ERS, CONSTITUTING AND COMPOSING THE RAILROAD COMMIS-  
SION OF GEORGIA, v. THE LOUISVILLE & NASHVILLE  
RAILROAD COMPANY, THE NASHVILLE, CHAT-  
TANOOGA & ST. LOUIS RAILWAY COMPANY, IN-  
DIVIDUALLY AND AS LESSEE OF THE WESTERN & ATLANTIC  
RAILROAD, THE CINCINNATI, NEW ORLEANS &  
TEXAS PACIFIC RAILWAY COMPANY, LESSEE OF  
THE CINCINNATI SOUTHERN RAILWAY, THE CINCINNATI  
SOUTHERN RAILWAY COMPANY, THE EAST  
TENNESSEE, VIRGINIA & GEORGIA RAILWAY  
COMPANY, THE ATLANTA & WEST POINT RAIL-  
ROAD COMPANY, AND THE WESTERN RAILWAY  
COMPANY OF ALABAMA.

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[No. 326.]

L. N. TRAMMELL, ALLEN FORT AND VIRGIL POW-  
ERS, CONSTITUTING AND COMPOSING THE RAILROAD COM-  
MISSION OF GEORGIA, v. THE CLYDE STEAMSHIP  
COMPANY, THE SOUTH CAROLINA RAILWAY  
COMPANY, THE GEORGIA RAILROAD AND  
BANKING COMPANY, THE LOUISVILLE &  
NASHVILLE RAILROAD COMPANY AND THE  
CENTRAL RAILROAD & BANKING COMPANY

OF GEORGIA, LESSEES OF THE GEORGIA RAILROAD, THE RICHMOND & DANVILLE RAILROAD COMPANY, AND THE GEORGIA PACIFIC RAILWAY COMPANY, LESSEES OF THE CENTRAL RAILROAD OF GEORGIA, THE ATLANTA & WEST POINT RAILROAD COMPANY, AND THE WESTERN RAILWAY COMPANY OF ALABAMA.

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Complaints in Nos. 314, 315, 316 and 317 filed October 22, 1891.—Answers filed November 9, 1891, to January 18, 1892.—Also on March 25, 1892.—Complaints in Nos. 324, 325 and 326 filed January 20, 1892.—Answers filed February 15 to March 25, 1892.—Hearing at Atlanta, Ga., March 24, 25, 1892.—Briefs filed July 1 to August 24, 1892.—Decided November 11, 1892.

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1. The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation.
2. The phrase “common control, management or arrangement for continuous carriage or shipment” in the first section of the Act to regulate commerce was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.
3. The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves.
4. The second, third and fourth sections of the Act to regulate commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country and methods of trade and transportation, considered and criticised.

5. The fourth section of the Act to regulate commerce construed, and the principles laid down in *Re petitions of Louisville & Nashville R. Co.*, 1 I. C. C. Rep. 81, 1 Inters. Com. Rep. 278, re-affirmed, except the ruling therein whereby carriers were permitted to judge for themselves in the first instance of what constitutes "rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled.
6. The competition of carriers subject to the Act to regulate commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines.
7. The competition of markets on different lines for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines.
8. The carrier has the right to judge in the first instance whether it is justified in making the *greater charge for the shorter distance* under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under the Act to regulate commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar and carriers must not charge *less for the longer distance* except upon the order of this Commission.
9. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There

seems to be no limitation upon the power of the Commission to grant relief under that proviso, when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers require that an exception should be made.

10. Complaints in cases No. 324 and No. 325 dismissed. In cases Nos. 314, 315, 316, 317 and 326, defendants ordered to cease and desist from charging more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified.

*William A. Little and Robert Berner*, for complainant.

*James T. Worthington*, for R. & D. R. R. Co., Ga. P. R'y Co. and C. R. R. & Bk'g Co. of Ga.

*Thomas Cobb Jackson*, for Receivers of C. R. R. & Bk'g Co. of Ga.

*Calhoun, King & Spalding*, for A. & W. P. R. R. Co.

*George P. Harrison*, for W. R'y of Ala.

*Joseph B. Cumming and Bryan Cumming*, for Ga. R. R. and Ga. R. R. & Bk'g Co.

*William M. Baxter*, for E. T. V. & G. R'y Co.

*Ed. Baxter*, for L. & N. R. R. Co.

*Brawley & Barnwell*, for Receiver of S. C. R'y Co.

*Edward Colston*, for C. N. O. & T. P. R'y Co.

*East & Fogg*, for N. C. & St. L. R'y Co. and W. & A. R. R.

*Payne & Tye*, for W. & A. R. R.

#### REPORT AND OPINION OF THE COMMISSION.

VEAZEY, *Commissioner*:

The complaints in the above entitled cases, brought by the members and in the name of the Railroad Commission of the state of Georgia, allege that the rates charged by the defendants for the transportation of freights from Cincinnati and other Ohio river points and from New York and other North Atlantic ports to various named places, nearly all within the state of Georgia, are "unreasonable, discriminating and in direct violation of section four of the Act to regulate commerce."

The violations of law alleged in the several complaints being of the same general character, differing only as to

points and routes, it was understood at the hearing that the testimony taken in each case would be considered in the others so far as applicable, and it is proper, therefore, that all these cases should be embraced in the same decision.

The main question presented by the pleadings is whether charges which are greater for shorter than for longer distances in the same direction over the defendant lines are unlawful under the statute.

The defendants in their answers deny that transportation to the longer and shorter distance points is under substantially similar circumstances and conditions, and that therefore the greater charges for shorter distances complained of do not contravene the provisions of the Act to regulate commerce. The principal grounds on which this denial is based are the competition of all rail and part rail and part water lines from the same point of consignment to the same point of destination; the competition of all rail and part rail and part water lines from different points of consignment to the same destination; and the influence of water routes which either reach the point of destination direct, or deliver to a connecting carrier at a point in the same territory.

Still another ground of defence was set up in some of the cases, that property destined to intermediate points is not carried under circumstances and conditions substantially similar to those applying at the longer distance points because through rates are given only to the latter, while rates to the shorter distance points are made up of a through rate in effect to a basing point plus local rates of the terminal carrier therefrom.

There are, however, two minor questions to be considered: 1. Is the complainant authorized to bring and maintain these proceedings? 2. Are certain of the defendants common carriers over the line between points mentioned?

The Georgia Railroad Commission, complainant herein, is directed by a statute of the state of Georgia to bring complaint before this Commission whenever, after failure to obtain a satisfactory adjustment of rates, it finds through rates charged into Georgia to be excessive, unreasonable or discriminating, and by section thirteen of the Act to regulate

commerce, this Commission is directed to investigate any complaint forwarded by the Railroad Commission of any state or territory. It is immaterial whether the complainant be the state Railroad Commission itself, or the parties on whose behalf it requests the investigation to be made. The Georgia Railroad Commission is a proper complainant in these proceedings.

As to the second of the minor questions, whether certain of the defendants, to wit, the Georgia Railroad & Banking Company, the Central Railroad & Banking Company, the Georgia Pacific Railway Company, and the Richmond & Danville Railroad Company, are common carriers controlling rates and operating roads parts of through lines between points of shipment and destination, it seems sufficient to hold generally that only those defendants who are in any degree responsible for transportation charges over the respective roads will be expected to comply with any order for the re-adjustment of those charges which may hereafter be issued in these proceedings. It was claimed on the hearing that the defendant, the Central Railroad & Banking Company of Georgia, was then in the hands of receivers, and not properly before the Commission. That Company was served with a copy of each complaint in which it was interested and before the receivers assumed control of its affairs; answers were filed on its behalf, and the receivers afterwards appointed were represented by counsel at the hearing. Under these facts the proceedings may well go on without a present determination whether a regulating order in the case would affect the receivers without an order of the court which appointed them. As a general proposition we see no reason why the fact of a receivership subsequent to complaint should interfere with the progress of a proceeding brought merely for the purpose of railway regulation.

Another question in the cases is whether the transportation of property over the roads composing the respective through lines to the intermediate points is conducted under a common control, management, or arrangement for continuous carriage or shipment, but this question is raised by the defendants in connection with the main point in controversy,

and should not be determined until after the facts in the cases are found and stated.

In view of the fact that the issues present mainly a single question of violation of the fourth section, the decision of which will also involve the disposition of the subsidiary matters of unreasonable and discriminating rates alleged and denied herein, it seems unnecessary to further analyze the pleadings. The respective routes, points and rates involved in the several cases are described in the following statement of facts, rates to points termed shorter distance points being those of which complaint is made. The cases will, with a single exception, be taken up in the order in which they were heard.

#### FACTS.

##### *Case No. 317.*

1. In this case the route is all rail from Cincinnati or other places called "Ohio river points" over either the Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga or Boyce, near Chattanooga, or the Louisville & Nashville Railroad to Nashville, and the Nashville, Chattanooga & St. Louis Railway to Chattanooga, and from Boyce or Chattanooga by the Western & Atlantic Railroad, operated under lease from the state of Georgia by the Nashville, Chattanooga & St. Louis Railway Company to Calhoun, Adairsville, Kingston, Cartersville, Ackworth and Marietta, shorter distance points, and Atlanta, the longer distance point, all in the state of Georgia. This route will be designated "The Chattanooga-Atlanta All-Rail Route," and is shown on next page:

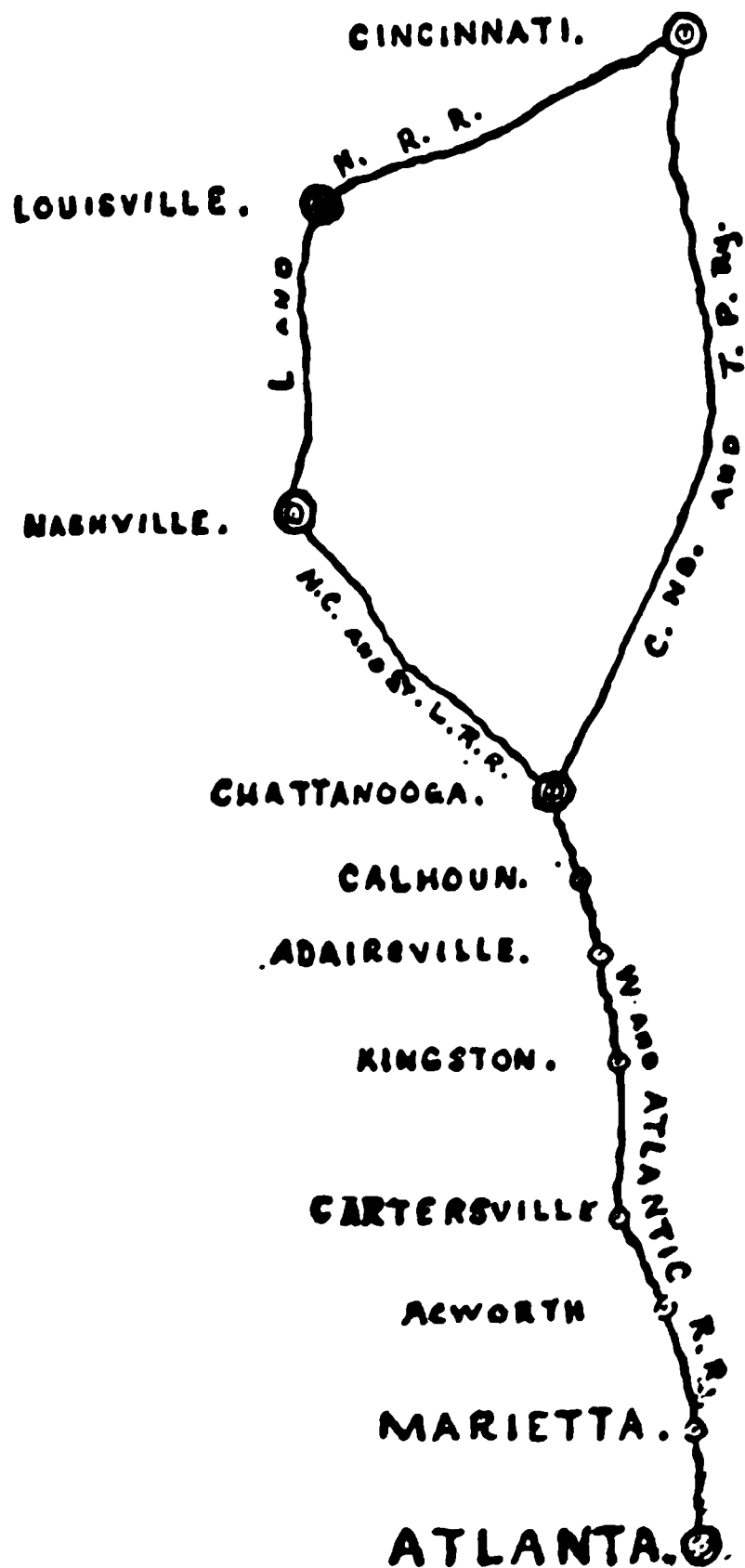
Freight is carried from Cincinnati over this route to the various destinations on the Western & Atlantic road as through shipments under through bills of lading issued by the initial line. Through freight is delivered free to consignees in Atlanta either by carting or switching to warehouse doors; no free delivery is made at the local stations on the Western & Atlantic.

2. Rates to Atlanta on property shipped from north of Chattanooga are divided between the carriers in certain proportions, but charges to all points north of Atlanta and south



of Chattanooga are combinations of established rates to Chattanooga and local rates of the Western & Atlantic from Chattanooga. In 1887 the Western & Atlantic issued a circular to its connections stating in effect that it would not accept

### THE CHATTANOOGA-ATLANTA ALL-RAIL ROUTE.



less than its regular local charges on through business to points on its line where competition did not compel it to participate in and agree to lower through rates. This circular does not appear to have been filed with the Commission, nor were the defendants able to produce it at the hearing, but there is no reason to doubt its having been issued.

When the circular was issued this road was under another management, but the lessee now operating the road introduced evidence concerning the circular and continues to charge according to its terms.

Rates and distances over the Chattanooga-Atlanta route from Cincinnati are shown by the following table. Rates to Chattanooga and Atlanta are single rates, while those to the other points are combination rates to Chattanooga and locals therefrom.

STATEMENT SHOWING CLASS RATES FROM CINCINNATI TO THE FOLLOWING STATIONS ON THE WESTERN & ATLANTIC R. R.														
From Cincinnati, O.														
Miles.	To	1	2	3	4	5	6	A	B	C	D	E	H	F
336...	Chattanooga, Tenn...	76	65	57	47	40	30	20	26	23	19	34	33	38
359...	Ringgold, Ga.....	98	85	75	63	53	41	31	37	30½	25½	47	49	58
374...	Dalton, Ga.....	108	89	79	67	56	42	28	36	31	26½	48	53	54
396...	Calhoun, Ga.....	109	95	84	71	59	44	34	40	32	27½	53	57	56
405...	Adairsville, Ga.....	112	98	86	73	60	45	35	41	32½	28	54	59	57
415...	Kingston, Ga.....	115	101	88	75	61	46	36	42	31½	27	55	61	55
426...	Cartersville, Ga.....	118	103	90	76	62	47	37	43	34	29	56	62	59½
439...	Acworth, Ga.....	124	107	94	78	64	49	39	45	35	30	58	64	61
453...	Marietta, Ga.....	127	109	96	79	65	50	38	45	35	30	56	65	62
463...	Vinings, Ga.....	123	106	94	78	65	51	36	43	33½	29	57	63	59½
474...	Atlanta, Ga.....	107	92	81	68	56	46	28	35	28	24	48	53	48

The local rates and distances over the Western & Atlantic from Chattanooga and intermediate points are as follows:

STATEMENT SHOWING CLASS RATES FROM CHATTANOOGA TO LOCAL STATIONS ON THE WESTERN & ATLANTIC R. R.														
From Chattanooga-														
Miles.	ooga to	1	2	3	4	5	6	A	B	C	D	E	H	F
23...	Ringgold, Ga...	22	20	18	16	13	11	11	11	7½	6½	13	16	15
38...	Dalton, Ga.....	27	24	22	20	16	12	12	12	8	7½	16	20	16½
60...	Calhoun, Ga.....	33	30	27	24	19	14	14	14	9	8½	19	24	18
69...	Adairsville, Ga...	36	33	29	26	20	15	15	15	9	9	20	26	19
79...	Kingston, Ga....	39	36	31	28	21	16	16	16	10	9½	21	28	20
90...	Cartersville, Ga...	42	38	33	29	22	17	17	17	11	10	22	29	21½
103...	Acworth, Ga....	48	42	37	31	24	19	19	19	12	11	24	31	23
117...	Marietta, Ga....	51	44	39	32	25	20	20	20	13	12	25	32	24
127...	Vinings, Ga....	54	46	41	33	26	21	21	21	13	12	26	33	25
138...	Atlanta, Ga....	57	48	43	34	27	22	22	22	12	11	27	34	24

The proportions received by the carriers of the rate from

Cincinnati to Atlanta were not testified to, but the Commission is informed that the following divisions were in effect some time ago:

C., N. O. & T. P. to Chattanooga.....	336 miles	70 9-10 per cent.
W. & A. to Atlanta.....	138 miles	29 1-10 per cent.
	<hr/> 474	<hr/> 100

Out of the rate of \$1.07 first class, this would give to the C., N. O. & T. P. about 76 cents, its regular rate to Chattanooga, and the W. & A. 31 cents, and it gets this proportion by either route from Cincinnati. The local rate of the Western & Atlantic, Chattanooga to Atlanta, is 57 cents per hundred pounds.

3. Other lines which reach Atlanta from Cincinnati are:—

Cincinnati, New Orleans & Texas Pacific to Chattanooga, 336 miles; and East Tennessee, Virginia & Georgia to Atlanta, 152 miles; through distance 488 miles.

Louisville & Nashville to Nashville, 295 miles; Nashville, Chattanooga & St. Louis to Chattanooga, 151 miles; East Tennessee, Virginia & Georgia to Atlanta, 152 miles; through distance 598 miles.

Louisville & Nashville and Nashville, Chattanooga & St. Louis to Chattanooga, 446 miles; or Cincinnati, New Orleans & Texas Pacific to Chattanooga, 336 miles, and from thence the Chattanooga, Rome & Columbus (now Central of Georgia) to Kramer, 125 miles, and Georgia Pacific to Atlanta, 53 miles; through distances, respectively, 624 miles and 514 miles.

Louisville & Nashville system to Jellico, 216 miles, and East Tennessee, Virginia & Georgia to Atlanta, 289 miles; through distance 505 miles.

Either the Cincinnati, New Orleans & Texas Pacific or the Louisville & Nashville is the initial carrier in each of these competing through lines, and both are defendants herein. The Louisville & Nashville owns most of the capital stock of the Nashville, Chattanooga & St. Louis Railway Company, and the latter leases from the State of Georgia and operates the Western & Atlantic Railroad. The through distance over

this line is 584 miles. The Louisville & Nashville in sending traffic from Cincinnati to Atlanta prefers this route, while the Cincinnati, New Orleans & Texas Pacific favors the East Tennessee, Virginia & Georgia, with which it connects at Chattanooga. The short line to Atlanta from Cincinnati is the Cincinnati, New Orleans & Texas Pacific to Boyce, and the Western Atlantic to Atlanta, distance about 474 miles, but the rate is the same by either line. The Cincinnati, New Orleans & Texas Pacific reaches Chattanooga by its own line over the shorter distance from Cincinnati, and its local rate to Chattanooga is the joint rate over the longer line of the Louisville & Nashville, and Nashville, Chattanooga & St. Louis roads.

4. There is competition for the sale of commodities in Atlanta between Cincinnati and other cities, such as Boston, New York, Philadelphia and Baltimore, and the transportation from these Atlantic points is either all rail or water and rail by the Atlantic Coast Line, Seaboard Air Line, Richmond & Danville, Norfolk & Western, and East Tennessee and others. The water lines run to the ports of Norfolk, Portsmouth, Charleston, Savannah, Brunswick, and possibly through Port Royal and Jacksonville. From these ports Atlanta is reached by rail; the South Carolina and Georgia roads from Charleston, the Central of Georgia, the Savannah, Florida & Western and East Tennessee, from Savannah; the East Tennessee from Brunswick; the Port Royal & Augusta Railway from Port Royal; the Queen & Crescent and Louisville & Nashville run from New Orleans, and Mobile stands on similar footing.

There are also rail lines from various Mississippi and Ohio river points, which compete for Atlanta trade, such as Vicksburg, Greenville, Memphis, Cairo, Paducah, Evansville and Louisville.

Freight from Cincinnati for Atlanta might reach Atlanta by a rail line over the Chesapeake & Ohio and Richmond & Danville roads, or by water and rail through Baltimore, and steam or sail craft could also be employed to the South Atlantic ports; but these routes are very circuitous, and would

only be used under very exceptional conditions. Freight might go from Cincinnati to Memphis by water, and from thence by rail to Atlanta, but it was not made to appear that any appreciable amount of general freight actually does go that way in competition with the all-rail route; the distance from Memphis to Atlanta by the Kansas City, Memphis & Birmingham and Georgia Pacific is about 418 miles, only 56 miles less than the through all-rail route from Cincinnati to Atlanta.

There is no competition by independent water routes to Atlanta. Traffic shipped from any Ohio or Mississippi river point, or from a North Atlantic port must pass over a line of one or more railroads in order to reach Atlanta, and such traffic is forwarded as a through shipment and taken either by all-rail or by water and rail carriers under through bills of lading and at agreed through rates. The distance from Baltimore to Atlanta through the port of Charleston for the purpose of rate divisions is put at 160 constructive miles by the water way to Charleston, and about 310 miles for the rail carriage from that port to Atlanta, or about 470 miles through. The distance from Baltimore to Atlanta by the Richmond & Danville and Baltimore & Potomac roads, the direct all-rail line, is 691 miles.

The rates of the eastern rail lines from New York and other seaboard cities to Cincinnati are very low; for instance, the first-class rate New York to Cincinnati is 65 cents. The first-class rate New York to Chattanooga is \$1.14, and the all-rail rate to Atlanta is \$1.22.

The present adjustment of rates to Atlanta is the outcome of severe competition between lines leading from competing markets like St. Louis, Baltimore, Cincinnati, etc., and, with some modifications occurring from time to time, has been in effect for a considerable period. The lines controlling rates to Georgia territory are all members of the Southern Railway & Steamship Association, and there is not now any actual competition between them as to rates on through business to points in that territory from one market like Cincinnati, or from different markets like Cincinnati and Baltimore or New York. These rates resulted from agreement between

the several lines. The Atlanta rates were agreed upon by the lines with a view of affording to each some share of the traffic.

The Rome Railroad connects Kingston, Ga., with the East Tennessee and Central of Georgia at Rome, Ga. From Marietta the Marietta & North Georgia Railroad runs northerly 204 miles to Knoxville, Tenn., where it connects with the East Tennessee line, and also with the Knoxville, Cumberland Gap & Louisville Railroad, which extends 72 miles to Middlesboro, Ky., and there meets the Louisville & Nashville system by which Cincinnati can be reached over a distance of 230 miles from Middlesboro; this gives a possible competing line from Cincinnati to Marietta of 506 miles, and to Atlanta of 527 miles. From Cartersville, Ga., the East and West Railroad of Alabama runs westerly to Rock Mart, 22 miles, connecting with the East Tennessee, and 16 miles farther it reaches the Central of Georgia at Cedartown. Competition has not forced rates down at Kingston, Marietta or Cartersville. No railroad other than the Western & Atlantic runs to Calhoun, Adairsville or Acworth.

6. On December 27, 1890, the Western & Atlantic Railroad was leased by the State of Georgia to the Nashville, Chattanooga & St. Louis Railway Company for 29 years, at an annual rental of \$420,012. The operation of the leased line has not been separately reported since that date. Prior to that time the road was operated under lease by the Western & Atlantic Railroad Company, at an annual rental of \$300,000. The road being owned by the state, no report was made of "Capital Stock," or "Cost of Road, Equipment and Permanent Improvement" by the lessee company. From the report of this road to this Commission for the year ending June 30, 1890, the following statement is compiled:

The "Gross Earnings from Operation" were \$1,562,059.76; "Operating Expenses," \$1,022,668.70; "Income from Operation," \$539,391.06; "Income from other Sources," \$10,615.89; "Total Income," \$550,006.95. From this amount there were paid as "Deductions from Income," \$312,677.24, \$300,000 of

which was the rental paid by the operating company to the State of Georgia, leaving a "net income" of \$237,329.71. From this last-named item there was paid \$78,225 on income bonds for principal and coupons, so that the "Surplus from Operations of year ending June 30, 1890," was \$159,104.71. This, combined with the "surplus" from the previous year, made the "Surplus on June 30, 1890," \$331,077.86. The "Freight Revenue" was \$1,255,778.49, from which there were repayments on account of "Overcharge to Shippers," \$71,737.27, and "Other Repayments," \$13,110.53. Total, \$84,847.80, leaving "Total Freight Revenue," \$1,170,930.69.

A reference to the "Comparative General Balance Sheet" shows that the company operating the road has as "Assets," \$8,350, "Stocks" and "Bonds of other Companies owned," "Cash and Current Assets," \$414,611.93; "Materials and Supplies," \$4,315.89. Their "Liabilities" were, "Current Liabilities," \$96,199.96, and "Profit and Loss" ("Surplus"), \$331,077.86.

Referring to the "Freight Traffic" of the road, it appears that the "Number of tons carried of freight earning revenue" were 1,083,336; the "Number of tons carried one mile," 125,220,827, which shows the "Average distance haul of one ton" 115 60-100 miles. It appears that of the "Number of tons carried of freight earning revenue," 156,585 tons only originated on the road, and the balance, 926,751 tons, was "Received from Connecting Roads and other Carriers." The "Average receipts per ton per mile" were .00,935 cents; "Estimated cost of carrying one ton one mile," .00,555 cents; "Freight earnings per train-mile," \$1.03,052; and "Estimated cost of running a freight train one mile," .61,201 cents.

By the foregoing it appears that of the 1,083,336 tons carried that year, only 156,585 tons originated on the road, the balance, 926,751 being received from connecting and other carriers; that is to say, less than 15 per cent., or but very little over one-seventh of the total tonnage was local business, and some of this was doubtless carried over the whole line. The average distance haul per ton of the entire tonnage was 115 60-100 miles, or nearly 84 per cent. of the road's

length of 138 miles. The bulk of the local business may be assumed to consist of shipments between Chattanooga or Atlanta and intermediate stations; and as the average distance haul per ton of the total tonnage was over 115 miles, say as far as Marietta, only 21 miles from Atlanta, going south, and Ringgold, only 23 miles from Chattanooga, going north, it may be stated as a fact that nearly all of the freight traffic received from other carriers was carried over the entire distance between Chattanooga and Atlanta, the termini of the road.

7. Rates from Cincinnati to Calhoun, Adairsville and Kingston are higher than the rates to Atlanta on all classes except class 6. To Cartersville, Acworth and Marietta they are higher on all classes. To bring rates to these points down to the level of Atlanta rates will require the following reductions per hundred pounds:

Classes....	1	2	3	4	5	6	A	B	C	D	E	H	F
Calh'n cts.	2	3	3	3	3		6	5	4	3	5	4	8
Adairsv'le	5	6	5	5	4		7	6	4½	4	6	6	9
Kingston.	8	9	7	7	5		8	7	3½	3	7	8	7
Cartersv'l	11	11	9	8	6	1	9	8	6	5	8	9	11½
Acworth..	17	15	13	10	8	3	11	10	7	6	10	11	18
Marietta..	20	17	15	11	9	4	10	10	7	6	8	12	14
Vinings...	16	14	13	10	9	5	8	8	5½	5	9	10	11½

Rates on classes A, B, C, D, E, H and F are also somewhat higher to Ringgold and Dalton than to Atlanta, but they are lower to these points on classes 1 to 6, inclusive. There is no evidence showing even approximately the amount of traffic carried to Calhoun, Adairsville, Kingston, Cartersville, Acworth and Marietta, from points on other lines, but, as stated in the last finding, the bulk of the traffic received from connecting and other carriers was carried over the whole length of the road, and therefore the number of tons shipped from Cincinnati and other northerly points to Calhoun and other more distant intermediate stations must have been comparatively insignificant.

The rates per ton per mile on the highest and lowest classes



from Cincinnati and Chattanooga to the above-named stations on the Western & Atlantic road are as follows:

RATES PER TON PER MILE.

	From Cincinnati.			From Chattanooga.		
	Class 1	Class A	Miles.	Class 1	Class A	Miles.
Chattanooga.....	4.52 c.	1.19 c.	336			
Ringgold.....	5.46 "	1.74 "	359	19.13 c.	9.56 c.	23
Dalton.....	5.51 "	1.50 "	374	14.21 "	6.31 "	38
Calhoun.....	5.50 "	1.72 "	396	11.00 "	4.66 "	60
Adairsville.....	5.53 "	1.73 "	405	10.44 "	4.34 "	69
Kingston.....	5.54 "	1.74 "	415	9.87 "	4.05 "	79
Cartersville.....	5.54 "	1.74 "	426	9.33 "	3.78 "	90
Acworth.....	5.65 "	1.78 "	439	9.32 "	3.69 "	103
Marietta.....	5.61 "	1.68 "	453	8.78 "	3.42 "	117
Vinings.....	5.31 "	1.55 "	463	8.50 "	3.30 "	127
Atlanta.....	4.51 "	1.18 "	474	8.26 "	3.19 "	138

*Case No. 314.*

8. This route is from New York and other North Atlantic ports over the through water and rail line formed by steamships of the Clyde Steamship Company delivering at Charleston to the South Carolina Railway which connects with and delivers to the Georgia Railroad at Augusta; the points of destination being located on and along the latter line, which terminates at Atlanta. The intermediate points to which rates are complained of as being higher than for the longer distance to Atlanta, are Greensboro, Madison, Social Circle, Covington, Conyers and Stone Mountain.

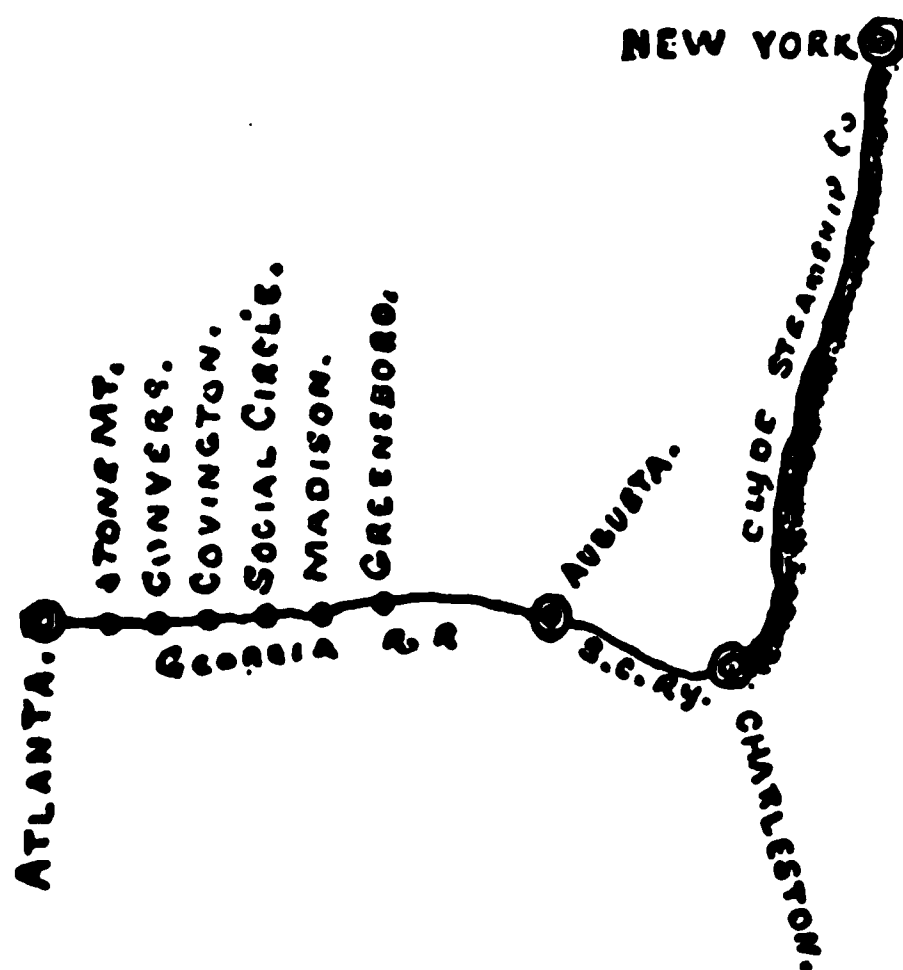
This will hereinafter be called "The Augusta-Atlanta Part Water Route," an outline of which appears by the following diagram, on next page.

The Georgia Railroad is owned by the defendant the Georgia Railroad & Banking Company, and jointly operated under lease by the defendants, the Louisville & Nashville Railroad Company and the Central Railroad & Banking Company of Georgia.

Freight is carried over this route to the points above mentioned under through bills from the point of shipment. The facts before stated with reference to the Chattanooga-Atlanta route in regard to competing lines for Atlanta traffic, includ-

ing free delivery of freight at that point, apply also to this route.

### THE AUGUSTA-ATLANTA PART WATER ROUTE.



9. Rates to Augusta and Atlanta are divided between the carriers upon a proportionate basis. Rates to points intermediate between Augusta and Atlanta are combination rates made up of rates to the terminal points with locals added. Charges to these intermediate points are based as follows: Greensboro and Madison on the Augusta rate; Social Circle, classes 1 and B on Atlanta; Classes 3, 4, 5, 6, A, C, D, E, H and F on Augusta; class 2 on either Augusta or Atlanta; Covington, classes 1, 2, 3, A and B on Atlanta, the others on Augusta; Conyers, classes 1, 2, 3, 4, A, B and H on Atlanta; Classes 6, C, D, E and F on Augusta, and class 3 on either; Stone Mountain, Classes D and F on Augusta, Class C on either, and the other classes on Atlanta.

When rates are based on Atlanta, they consist of the charge through the point of destination to Atlanta, plus the local back. The following table shows the rates:

FROM NEW YORK, PHILADELPHIA, ETC., *via* CHARLESTON TO GEORGIA RAIL-  
ROAD STATIONS.

CLASSES.	1	2	3	4	5	6	A	B	C	D	E	H	F
Augusta.....	.96	.81	.70	58	47	37	28	42	31½	31	43	54	61
Greensboro.....	1.87	1.18	1.02	87	69	54	45	59	42½	41	65	83	82½
Madison.....	1.44	1.23	1.07	89	71	56	47	60	43	42	67	85	84
Social Circle....	1.44	1.25	1.09	90	72	57	48	61	43½	42½	68	86	85
Covington.....	1.41	1.22	1.08	91	73	58	48	60	44	43	69	87	86
Conyers.....	1.38	1.19	1.05	90	74	59	47	59	44½	43	70	85	87½
Stone Mount'n.	1.32	1.14	1.01	85	71	58	45	57	47	44	69	80	89½
Atlanta.....	1.14	.98	.86	78	60	49	36	48	40	39	58	68	78

## LOCAL RATES ON GEORGIA R. R. FROM AUGUSTA.

To	Miles.	1	2	3	4	5	6	A	B	C	D	E	F
Greensboro.....	83	41	37	32	29	22	17	17	17	11	10	22	21½
Madison .....	103	48	42	37	31	24	19	19	19	11½	11	24	23
Social Circle.....	119	51	44	39	32	25	20	20	20	12	11½	25	24
Covington.....	130	54	46	41	33	26	21	21	21	12½	12	26	25
Conyers.....	140	57	48	43	34	27	22	22	22	13	12½	27	26½
Stone Mountain....	155	62	52	46	36	29	24	24	24	14½	13	29	28½
Atlanta.....	171	64	54	47	37	30	25	25	25	15½	14½	30	31

The evidence does not show how rates to Atlanta are divided between the carriers over this route. The Commission has reason to believe, however, that these rates are divided upon a mileage basis, the Clyde line being allowed 250 miles for the distance to Charleston. On the basis of such mileage the divisions of the rate to Atlanta, \$1.14 first class, would be about 51 cents for the Clyde line's 250 miles to Charleston; 29 cents for the South Carolina road's 137 miles to Augusta, and 34 cents for the Georgia road's 171 miles to Atlanta.

The rates per ton per mile to the Georgia Railroad stations from Augusta on the highest and lowest class rates are as follows:

	Class 1.	Class D.
Greensboro.....	9.88 cents.	2.41 cents.
Madison.....	9.32 "	2.14 "
Social Circle.....	8.57 "	1.93 "
Covington.....	8.30 "	1.84 "
Conyers.....	8.14 "	1.78 "
Stone Mountain.....	8.00 "	1.68 "
Atlanta.....	7.49 "	1.70 "

The through first-class rate, rail or water and rail, from

New York to Chattanooga is \$1.14, the same as the water and rail rate to Atlanta, and is in effect over all routes. The first-class all-rail rate to Atlanta is \$1.22, water and rail \$1.14; to Augusta the all-rail rate is \$1.04, and by water and rail it is 96 cents. But the first-class rate to Augusta or Atlanta from Cincinnati is \$1.07, while to Chattanooga it is 76 cents. From Baltimore to Augusta the all-rail charge is 97 cents, while the water and rail rate is 89 cents; to Atlanta the water and rail rate is \$1.07, and by all rail it is \$1.15. Rates on the other classes are similarly adjusted. A full statement of through rates to various important basing points from New York, Baltimore and Cincinnati is hereinafter set forth.

10. Of the intermediate points mentioned, namely, Greensboro, Madison, Social Circle, Conyers, Covington and Stone Mountain, only two, Madison and Social Circle, are junction points. At Madison the Georgia Railroad connects with the branch of the Richmond & Danville running between Macon and Lula on the Atlanta & Charlotte division of the main line. The distance from Lula to Madison is 72 miles; the distance from Lula to Atlanta by the Richmond & Danville is 66 miles—practically the same distance. At Social Circle the Georgia Railroad connects with the Gainesville, Jefferson & Southern Railroad, which extends from Social Circle to Gainesville, a distance of 52 miles, where it connects with the Atlanta & Charlotte division of the Richmond & Danville line. The distance from Atlanta to Gainesville by the Richmond & Danville is 53 miles, about the same as from Social Circle to Gainesville. The first-class water and rail rate from New York to Madison or Social Circle is \$1.44 as against \$1.14 to Atlanta. The fact that different lines run to these two points has not compelled reductions in rates thereto, but it was stated in evidence that the fact of direct railroad connection between Madison and Macon would soon be likely to cause a lowering of rates to Madison, the short water and rail route from New York being through Brunswick and Macon.

11. The following is taken from the report of the Georgia

Railroad Company to the Commission for the year ending June 30, 1891. The report states in regard to "Capital Stock" as follows: "The franchise owned by the lessee organization is not capitalized. Said franchise is a lease of the Georgia R. R. and branches (not including Banking Department) for a period of 99 years from and after April 1, 1881, at a rental of \$600,000 per annum, payable by the lessee organization, \$300,000 on April 1, and \$300,000 on October 1, in each year." It has no "Funded Debt." Its "Current Liabilities" are \$835,223.35, which includes \$600,976.47, which is designated as "Ownership Debt," and is explained by a foot note: "The owners of the lease have advanced to the lessee organization." The "Cost of Road, Equipment, and Permanent Improvements" is reported by the lessor organization. However, the lessee expended during the year in improvements which it included in "Operating Expenses," \$185,399.79. The "Gross Earnings from Operation" were \$1,905,159.94. "Operating Expenses," \$1,236,796.65. "Income from Operation," \$668,363.29. "Income from other sources," \$60,618.00. "Total Income," \$728,981.29. From this "Total Income" there was paid as "Deductions from Income," \$610,302.42, of which \$600,000 was on account of rental paid for the use of the road. This leaves the "Net Income" \$118,678.87, which was carried to "Surplus from operations of year ending June 30, 1891." On June 30, 1890, there was a "Deficit" of \$484,479.47, which would leave the "Deficit on June 30, 1891," \$365,800.60. The "Freight Revenue" was \$1,291,732.69, from which there were repayments on account of "Overcharge to Shippers" and "Other Repayments" of \$16,751.20, which leaves the "Total Freight Revenue" \$1,274,981.49. The road also received other freight earnings on account of "Stock Yards," "Elevators," and "Other Items," \$538.90, making its "Total Freight Earnings" \$1,275,520.39.

The total "Assets" shown in the "Comparative General Balance Sheet," including the "Cash and Current Assets," "Materials and Supplies" and "Profit and Loss" (deficit), were \$963,150.70. The "Liabilities," in addition to the "Current Liabilities," heretofore referred to, were, "Agents' Deposits," \$20,900.00, and "Annual Inventory," \$107,027.35.

Referring to the "Freight Traffic" of this road, it appears that the "Number of tons carried of freight earning revenue" was 669,784. The "Number of tons carried one mile" was 90,370,108, which indicates that the "Average distance haul of one ton" was 135 miles. The "Average receipts per ton per mile" were .01,411 cents; the "Estimated cost of carrying one ton per mile" was .00,935 cents. Of the "Number of tons carried of freight earning revenue," it appears that 180,730 tons originated on this road, and 489,054 tons were "Received from connecting roads and other carriers."

*Case No. 325.*

12. In this case the transportation involved is from Cincinnati and other Ohio river points over the Cincinnati, New Orleans & Texas Pacific to Chattanooga, or else to the same point on the Louisville & Nashville and Nashville, Chattanooga & St. Louis roads, and from Chattanooga to Atlanta by either the East Tennessee or the Western & Atlantic; from Atlanta the traffic goes to the several destinations on the lines of the Atlanta & West Point and Western Railway of Alabama, to wit, Grantville, Hogansville, La Grange, West Point and Shorters, shorter distance points to which rates are complained of, and Opelika and Montgomery, the longer distance points—Opelika being nearer, however, than Shorters to Atlanta.

This route will be called the Atlanta & West Point All-Rail Route, and is shown on opposite page.

Traffic is carried under through bills to the several destinations, but the Nashville, Chattanooga & St. Louis does not participate in traffic to points between Montgomery and West Point except on consignments from points on the Ohio River below Henderson, and such consignments probably go *via* the Louisville & Nashville, from Nashville and through Montgomery instead of Atlanta; but freight from any other Ohio River point for stations on the Atlanta & West Point, including West Point, may go over its line through Chattanooga and be forwarded *via* Atlanta. Therefore traffic from points below Henderson to points on the Western Railway of Ala-

bama, except West Point, going over the N. C. & St. L. does not pass through the intermediate points above named, and such points are longer instead of shorter distance points as to traffic so shipped and routed.

### THE ATLANTA AND WEST POINT ALL RAIL ROUTE.



The Louisville & Nashville operates its own lines from Cincinnati, Louisville, Owensboro, Evansville, Henderson and other points on the Ohio River, through Nashville, Decatur and Birmingham, to Montgomery, and freights from those points consigned over its road for Montgomery and points on the

Western Railway of Alabama are carried over this line instead of the route through Chattanooga and Atlanta mentioned in the complaint, but it does send traffic by the route complained of to Atlanta & West Point stations east of West Point. West Point freight goes over the Montgomery route, unless directed to be forwarded *via* Atlanta. The distance from Cincinnati to Montgomery by the Louisville & Nashville is 600 miles; by the Atlanta & West Point route it is 649 miles; but the shortest distance to Montgomery from Cincinnati is by the Cincinnati, New Orleans & Texas Pacific to Birmingham, 478 miles, and the Louisville & Nashville from that point to Montgomery, 96 miles; total 574 miles. Montgomery can therefore be reached from Cincinnati and other Ohio River points over shorter routes than the one involved in this controversy.

The Louisville & Nashville connects at Birmingham with the Columbus & Western Railroad, operated by the Central of Georgia, and extending from that point to Opelika and Columbus. The distance from Cincinnati to Birmingham by the Louisville & Nashville is 504 miles, and from Birmingham to Opelika by the Columbus & Western it is 128 miles, a total of 632 miles. The distance from Cincinnati to Opelika by the Atlanta route is 583 miles; by the Louisville & Nashville to Montgomery and Western of Alabama it is 666 miles; and by the Cincinnati, New Orleans & Texas Pacific through Montgomery it is 640 miles. The Cincinnati, New Orleans & Texas Pacific is the short line to Birmingham from Cincinnati, being 478 miles, and, in connection with the Columbus & Western, Opelika is 606 miles from Cincinnati by this route. The distance from Montgomery to Shorters, one of the shorter distance points mentioned in the complaint, is 23 miles, and the mileage from Cincinnati to Shorters *via* Montgomery is only 597 miles, while *via* Atlanta it is 626 miles. The evidence does not show how the Cincinnati, New Orleans & Texas Pacific routes its traffic to stations on the Western Railway of Alabama between Montgomery and West Point. The shortest distance from Cincinnati to West Point is by the Atlanta route, 561 miles, and the bulk of



freight for that point may go that way when shipped over the Cincinnati, New Orleans & Texas Pacific.

13. Montgomery is situate upon the Alabama River, which empties into Mobile bay. There is possible direct water communication between points on the Ohio River and Montgomery, and some water competition on freight from western and Ohio River points has existed for six or seven years. The all-water competition was not shown to be active under railroad rates now in effect. The Mobile & Ohio Railroad carries freight from St. Louis to Mobile at the prevailing low rate, and this can come up the river to Montgomery.

Two lines of steamers run up the Alabama River from Mobile. There is water transportation of freights from eastern points to Mobile also, one line being the New York & Mobile Steamship Company. No water route extends to Opelika, but the Apalachicola and Chattahoochee rivers are navigable from Apalachicola up to Columbus except during a portion of the summer. It was not shown, however, that this route is much used except for lumber ships, or that it can be extensively employed by all vessels until the channel is materially improved. Columbus is 29 miles from Opelika, and connected therewith by the Columbus & Western road, operated by the Central of Georgia. There is competition by eastern cities, as Baltimore, Philadelphia, New York and Boston, over all rail and water and rail lines through South Atlantic ports for the sale of traffic in Montgomery, Opelika and all points in Georgia and Alabama territory.

14. Rates to West Point, Opelika and Montgomery are divided between the carriers upon an agreed basis, but those in effect to Grantville, Hogansville, La Grange and Shorters are found by the addition of locals and rates to Atlanta, Montgomery or Opelika, whichever gives the lowest combination. Opelika rates are adjusted with reference to Montgomery rates, and West Point rates are based upon either Montgomery or Opelika, whichever gives the lowest rates; but West Point rates are the subject of agreement between the lines.

The following table shows rates from Cincinnati, Ohio, to stations on the Atlanta & West Point and Western Railway of Alabama :

RATES FROM CINCINNATI, O., TO STATIONS ON ATLANTA & WEST POINT RAILROAD AND WESTERN RAILWAY OF ALABAMA														
Cincinnati, O., to Atlanta & West Point R. R.	Miles.	Classes.										Per bbl.		
		1	2	3	4	5	6	A	B	C	D		E	H
Atlanta.....	474..	1.07	.92	.81	.68	.57	.46	.28	.35	.28	.24	.48	.53	.48
Grantville....	525..	1.40	1.21½	1.08½	.92	.76	.60½	.42½	.49½	.37	.32	.68	.77	.65½
Hogansville...	532..	1.43½	1.25	1.10½	.94½	.77	.61½	.43½	.50½	.37	.32½	.69	.79½	.66
La Grange....	545..	1.46½	1.28½	1.13	.96½	.78	.62½	.44½	.51½	.37½	.33	.70	.81½	.67
West Point...	561..	1.35	1.18	1.05	.88	.73	.59	.41	.50	.38	.33½	.68	.65	.68
West.R'y of Ala.														
Opelika.....	583..	1.17	1.02	.91	.76	.63	.52	.32	.38	.31	.27	.54	.58	.54
Shorters.....	626..	1.36	1.28	1.12	.91	.76	.60	.45	.48	.39	.32	.70	.57	.72
Montgomery..	649..	1.08	1.02	.88	.71	.59	.47	.32	.33	.26	.22	.52	.37	.44

(See analysis of mileage to Shorters and Opelika above set forth.)

Rates as above taken from Louisville & Nashville, S. E., No. 20, effective March 16, 1892, and Louisville Tariff of Arb. No. 012, S. E., January 12, 1892.

HOW THE RATES ARE MADE.														
Miles from		CLASSES.												
		Atlanta. 1	2	3	4	5	6	A	B	C	D	E	H	F
Grantville, local.....		51	.33	.29½	.27½	.24	.20	.14½	.14½	.09	.08	.20	.24	.17½
Atlanta, through.....		...	1.07	.92	.81	.68	.56	.46	.28	.35	.24	.48	.53	.48
Grantville, through.....		...	1.40	1.21½	1.08½	.92	.76	.60½	.42½	.49½	.32	.68	.77	.65½
Hogansville, local.....		58	.36½	.33	.29½	.26½	.21	.15½	.15½	.09	.08½	.21	.26½	.18
Atlanta, through.....		...	1.07	.92	.81	.68	.56	.46	.28	.35	.24	.48	.53	.48
Hogansville, through....		...	1.43½	1.25	1.10½	.94½	.77	.61½	.43½	.50½	.32½	.69	.79½	.66
La Grange, local.....		71	.39½	.36½	.32	.28½	.22	.16½	.16½	.09½	.09	.22	.28½	.19
Atlanta, through.....		...	1.07	.92	.81	.68	.56	.46	.28	.25	.24	.48	.53	.48
La Grange, through.....		...	1.46½	1.28	1.13	.96½	.78	.62½	.44½	.51½	.33	.70	.81½	.67
West Point, through.....		87	1.35	1.18	1.05	.88	.73	.59	.41	.50	.33½	.68	.65	.68
Opelika, through. ....		109	1.17	1.02	.91	.76	.63	.52	.32	.38	.27	.54	.58	.54
Shorters, local.....		152	.28	.26	.24	.20	.17	.13	.13	.15	.10	.18	.20	.28
Montgomery, through....		175	1.08	1.02	.88	.71	.59	.47	.32	.33	.22	.52	.37	.44
Shorters, through.....		...	1.36	1.28	1.12	.91	.76	.60	.45	.48	.32	.70	.57	.72
Montgomery, through....		175	1.08	1.02	.88	.71	.59	.47	.32	.33	.22	.52	.37	.44

Rates as above taken from Louisville & Nashville, S. D., No. 20, effective March 16, 1892, and Louisville Tariff of Arb. No. 012, S. E., effective January 1st, 1892.

The following statement shows the rate per ton per mile on

the highest and lowest classes, according to the shortest mileage over any route from Cincinnati :

To	Miles.	Class 1. cts.	Class D. cts.
Atlanta.....	474	4.51	1.01
Grantville.....	525	5.33	1.22
Hogansville.....	532	5.39	1.22
La Grange.....	545	5.38	1.21
West Point.....	561	4.81	1.19
Opelika.....	583	4.01	0.93
Shorters .....	597	4.55	1.07
Montgomery.....	574	3.76	0.76

Following is a statement showing the rate per ton per mile to local stations from points on which rates to these local stations are based :

RATE PER TON PER MILE OF LOCAL RATES.

From Atlanta to	Class 1.	Class D.
Grantville.....	12.94 cts.	3.14 cts.
Hogansville.....	12.58 "	2.93 "
La Grange.....	11.12 "	2.53 "
From Montgomery to		
Shorters .....	24.35 "	8.70 "

15. The Atlanta & West Point and Western Railway of Alabama are corporations independent of each other, but for purposes of economy the roads are operated under one set of officers and the same crews, cars and engines run over both lines. The following financial statements are made up from reports to the Commission of these companies for the year ending June 30, 1891 :

Atlanta & West Point Railroad Company: The "Capital Stock" of this road was \$1,232,200; "Funded Debt," \$1,232,200; "Current Liabilities," \$95,067.78; "Cost of Road, Equipment and Permanent Improvements," \$2,464,400. The "Gross Earnings from Operation" were \$483,053.50; "Operating Expenses," \$343,689.45; "Income from Operation," \$139,364.05. There was paid from this as "Deductions from Income," \$86,878.32, leaving "Net Income" \$52,485.73. There was also paid a dividend of 6 per cent. on common stock of \$73,932, leaving the "Deficit from Operations of Year ending June 30, 1891," \$21,446.27. There was a "Sur-

plus on June 30, 1890" of \$124,359.28, which would make the "Surplus on June 30, 1891" \$102,913.01. The "Freight Revenue" was \$274,651.80, from which there was repaid as "Overcharge to Shippers" \$7,100.83, which leaves the "Total Freight Revenue" \$267,550.97. In addition to the "Cost of Road" heretofore referred to, the road returns in its "Comparative General Balance Sheet," as "Assets," "Cash and Current Assets," \$180,337.85; "Materials and Supplies," \$17,642.94. Its only "Liabilities" in addition to the "Capital Stock," "Funded Debt" and "Current Liabilities" hereinbefore referred to, are the "Profit and Loss" (surplus), \$102,913.01. The "Grand Total" of the Balance Sheet is \$2,662,380.79.

Referring to the "Freight Traffic," it appears that the "Number of tons carried of freight earning revenue" was 196,300. The "Number of tons carried one mile" was 13,761,055, which indicates that the "Average distance haul of one ton" was 70 miles. The "Average receipts per ton per mile" were 1.944 cents; the "Estimated cost of carrying one ton per one mile," 1.245 cents. Of the "Number of tons carried of freight earning revenue," 109,716 tons originated on this road, and 86,584 tons were "Received from connecting roads and other carriers."

Western Railway Company of Alabama: The "Capital Stock" of this road is \$3,000,000; "Funded Debt," \$1,543,000; "Current Liabilities," \$168,771.38. The "Cost of Road, Equipment and Permanent Improvements" is \$4,543,000. The "Gross Earnings from Operation" were \$572,220.49; "Operating Expenses," \$400,911.19, which leaves an "Income from Operation" of \$171,309.30. The "Income from other sources" was \$6,460.46, making the "Total Income" \$177,769.76. From this there was paid as "Deductions from Income," \$137,617.31, leaving the "Net Income" \$40,152.45, which was carried to "Surplus from Operations of year ending June 30, 1891." The "Surplus on June 30, 1890," was \$47,990.40, which would make the "Surplus on June 30, 1891," \$88,142.85. The "Freight Revenue" was \$340,802.21, from which there were repayments on account of "Overcharge to

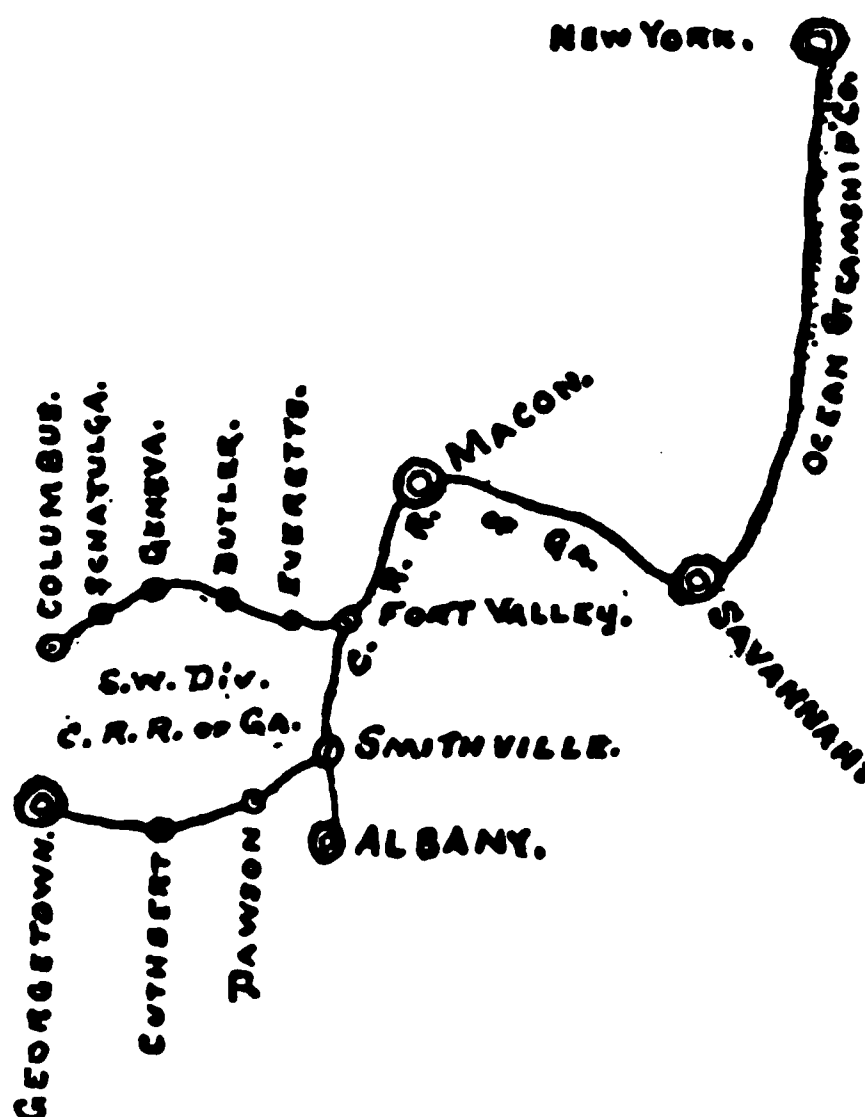
Shippers" of \$5,499.29, leaving the "Total Freight Revenue" \$335,302.92.

Reference to the "Comparative General Balance Sheet," discloses that in addition to the "Cost of Road" heretofore referred to, the road has "Assets" of "Cash and Current Assets," 204,792.87; "Materials and Supplies," \$52,121.36, making the "Grand Total" of the "General Balance Sheet" \$4,799,914.23. Its "Liabilities," in addition to the "Capital Stock," "Funded Debt" and "Current Liabilities" were the "Profit and Loss" (surplus), \$88,142.85. Reference to the "Freight Traffic" shows that the "Number of tons carried of freight earning revenue" was 320,428. The "Number of tons carried one mile" was 20,323,159, which shows that the "Average distance haul of one ton" was 63 miles. The "Average receipts per ton per mile" were 1.650 cents, and the "Estimated cost of carrying one ton one mile" was 1.061 cents. Of the "Number of tons carried of freight earning revenue," 148,474 tons originated on this road, and 171,954 tons were "Received from connecting roads and other carriers."

*Case No. 315.*

16. This was the next case heard, and the route is a water and rail line from New York and other North Atlantic ports by steamships of the Ocean Steamship Company to Savannah, which delivers to the Central Railroad of Georgia for carriage to points on its Southwestern Division beginning at Macon. The points involved are situate on two terminating roads, both in the same division of the Central of Georgia system. These points are, 1, Everett's, Butler, Geneva and Schatulga, shorter distance points, and Columbus, the longer distance point, 2, Smithville, Dawson and Cuthbert, shorter distance points, and Georgetown, the longer distance point. These terminal roads will hereinafter be called the Columbus Branch and the Georgetown Branch, respectively. A drawing of this route is here given under the title of—

**THE MACON-COLUMBUS-GEORGETOWN PART WATER ROUTE.**



The Central Railroad of Georgia has close traffic relations with the Ocean Steamship line. Traffic over this route is carried under through bills to the several destinations.

17. Rates to the shorter and longer distance points are straight rates, and are not based on a combination of rates to and from basing points. The highest first-class rate to any point is \$1.31, and the lowest is \$1.14, except to Macon, \$1.09, and Albany, which takes the Macon rate. Macon is a shorter distance from New York than any of the stations on this division, and Albany is not "on the same line" with the shorter and longer distance points directly involved in this case. The table shown below sets forth the rates to various points on this division, but as above stated rates are complained of only to Everett's, Butler, Geneva and Schatulga on the Columbus Branch, and Smithville, Dawson and Cuthbert on the Georgetown Branch.

STATEMENT SHOWING CLASS RATES FROM NEW YORK, N. Y., PHILADELPHIA, PA., ETC., TO THE FOLLOWING STATIONS ON THE SOUTHWESTERN DIVISION OF THE CENTRAL RAILROAD OF GEORGIA, JANUARY 20, 1892.

Distance from Macon, Ga.,															Per bbl.
To	Miles.	1	2	3	4	5	6	A	B	C	D	E	H	F	
Everett's.....	36	.131	.111	.98	.82	.67	.56	.46	.52	.40	.37	.67	.78	.75½	
Butler.....	50	.131	.111	.98	.83	.69	.56	.46	.53	.41	.38	.67	.78	.78	
Geneva.....	70	.131	.111	.98	.83	.69	.56	.46	.54	.42	.39	.67	.78	.80	
Schatulga.....	91	.131	.111	.98	.83	.69	.56	.46	.55	.43	.40	.67	.78	.82	
Columbus.....	100	.114	.098	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78	
To Macon.....		.109	.096	.83	.70	.59	.48	.34	.47	.35	.34	.52	.60	.58	
Fort Valley.....	29	.114	.098	.86	.73	.60	.49	.36	.48	.40	.37	.58	.68	.75½	
Marshville.....	37	.114	.098	.86	.73	.60	.49	.36	.48	.40	.37	.58	.68	.75½	
Montezuma .....	49	.114	.098	.86	.73	.60	.49	.36	.48	.40	.38	.58	.68	.78	
Americus.....	71	.114	.098	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78	
Leesburgh.....	96	.131	.111	.98	.83	.69	.56	.46	.55	.41	.40	.67	.78	.81	
Albany.....	107	.109	.096	.83	.70	.59	.48	.34	.47	.35	.34	.52	.60	.68	
Smithville.....	83	.131	.111	.98	.83	.69	.56	.46	.55	.41	.39	.67	.78	.80	
Dawson.....	98	.131	.111	.98	.83	.69	.56	.46	.55	.42	.40	.67	.78	.81	
Cuthbert.....	118	.131	.111	.98	.83	.69	.56	.46	.56	.42	.39	.67	.78	.82	
Georgetown.....	141	.114	.098	.86	.73	.60	.49	.36	.48	.40	.39	.58	.68	.78	

At Columbus the following lines centre: The Central of Georgia, Southwestern Division, and the Columbus & Western Division, which runs to Birmingham; Georgia Midland & Gulf to McDonough; Columbus Southern to Albany, Columbus & Rome to Greenville, and Mobile & Girard to Searight, the two latter being also a part of the Central of Georgia system. Georgetown is the first station east and two miles from Eufaula, the terminus of the Georgetown branch, and takes Eufaula rates. The Montgomery & Eufaula division of the Central of Georgia extends from Eufaula to Montgomery. Everett's, Butler and Schatulga have no railroad communication except the Central of Georgia. Smithville is the junction of the Albany & Eufaula, or Georgetown, branches. Dawson has connection between the Central of Georgia and Columbus Southern. Cuthbert is the junction of the Georgetown road with a branch for Fort Gaines.

19. There is possible competition to Columbus and Eufaula from New York by steamship to Jacksonville, rail to the Chattahoochee river, and steamer up that river to Eufaula



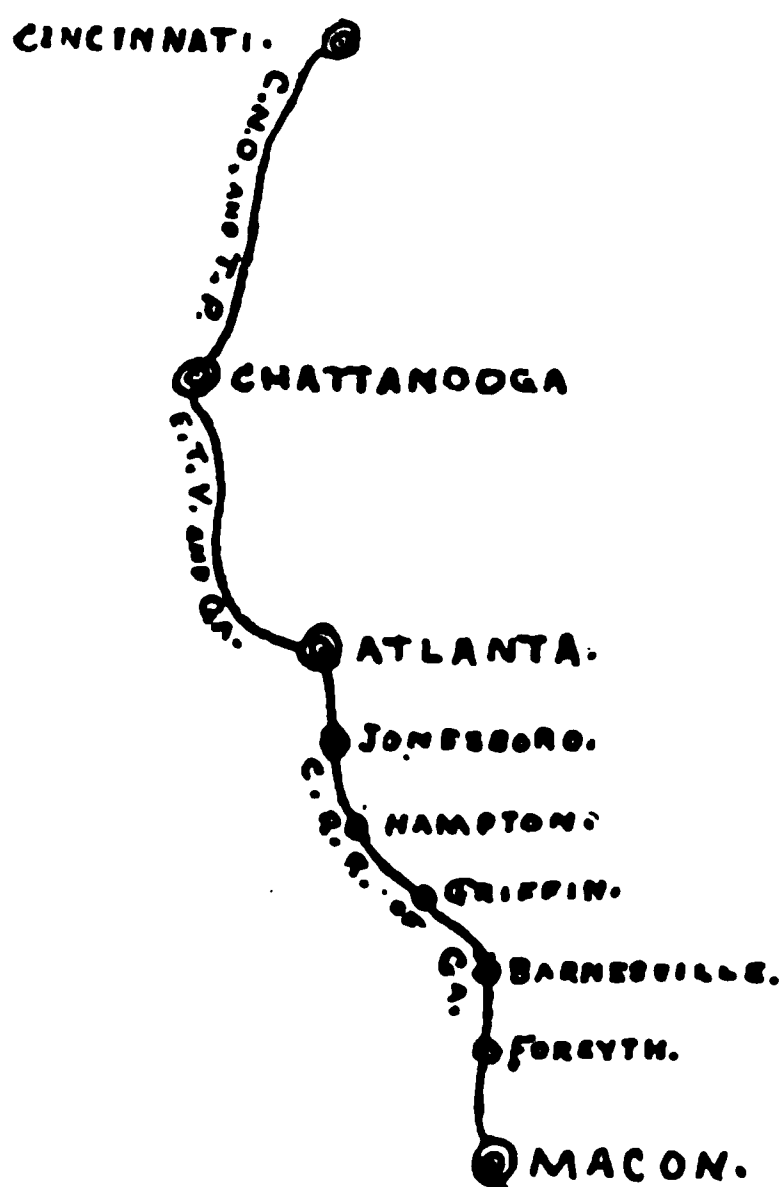
and Columbus, or by water all the way if a line were established, but under present rates and navigable conditions the river route is not a dangerous competitor. The various lines all-rail and water and rail, which penetrate this territory are competitors for the carrying trade, but the Central system controls the rates to Eufaula and Columbus, in a large degree, except by the river.

20. For the year ending June 30, 1890, the "Average receipts per ton per mile" of the Central of Georgia Railroad System was 1.902 cents, and the "Estimated cost of carrying one ton one mile" was 1.428 cents, .474 cents, nearly half a cent less than the rate received. Its "Net Income" was \$1,026,597.66, from which was paid an 8 per cent. dividend on \$7,500,000, the entire "Capital Stock," amounting to \$600,000, and the balance, \$426,597.66, was carried to the "surplus" account, which on June 30, 1890, was \$950,113.22. The "Number of tons carried of freight earning revenue" was 1,705,683, of which 944,521 tons originated on the road, and 761,162 tons were "Received from connecting roads and other carriers." This report is based on an operated mileage of 1,317.46 miles. The report was made by the "Central Rail Road and Banking Company of Georgia."

*Case No. 316.*

21. This is an all-rail route from Cincinnati and Ohio river points over the Cincinnati, New Orleans & Texas Pacific Railway to Chattanooga, the East Tennessee, Virginia & Georgia to Atlanta, and the Atlanta Division of the Central Railroad of Georgia to the points of consignment mentioned in the complaint as Jonesboro, Hampton, Griffin, Barnesville and Forsyth, intermediate stations, and Macon the terminus, to which, though a longer distance, lower rates are charged than to the shorter distance points mentioned. This route is here termed the Atlanta-Macon All-Rail Route, and is as follows:

## ATLANTA-MACON ALL RAIL ROUTE.



Traffic goes over this route under through bills of lading to the various destinations named above. By this line Atlanta is 488 miles from Cincinnati and 103 miles from Macon, making the distance to Macon from Cincinnati 591 miles. There is no water route to Macon, but the same strong competition exists between carriers and markets for the Macon as for the Atlanta trade.

22. The same rates are in effect to both Atlanta and Macon from Cincinnati, except on classes B, C, D, E, H and F, which are two cents higher to Macon. Some of the rates to intermediate points are based on rates to Atlanta or Macon, plus the locals therefrom, especially rates on the higher classes, the others are straight rates. A table of these rates with distances from Cincinnati is here given :

From Cincinnati,			Classes, rates in cents per 100 pounds.									Per bbl.		
O., to,	Miles	1	2	3	4	5	6	A	B	C	D	E	H	F
Atlanta, Ga.	488	107	92	81	68	56	46	28	35	28	24	48	53	48
Jonesb'r, "	509	129	112	99	83	69	57	39	46	35	30	61	68	61½
Hampton "	520	133	115	102	87	71	58	40	47	35½	31	63	72	63
Griffin, "	531	139	121	107	87	72	57	42	49	36½	32	66	73	65½
Barnsv'll "	548	139	121	107	91	75	60	42	50	37	32½	69	78	66
Forsyth, "	564	131	114	101	86	70	58	40	48	36½	32	65	73	65
Macon, "	591	107	92	81	68	56	46	28	38	33	29	50	55	58

Rates taken from Cincinnati, New Orleans & Texas Pacific R'y Supplement No. 2. Through Tariff No. 15, effective August 24, 1891, and through Freight Tariff No. 15 effective April 16, 1891.

The rates per ton per mile on the highest and lowest classes are as follows:

To	Class 1.	Class D.
Atlanta.....	4.38 Cents.	.98 Cents.
Jonesboro.....	5.07 "	1.18 "
Hampton.....	5.12 "	1.19 "
Griffin.....	5.23 "	1.20 "
Barnesville.....	5.07 "	1.18 "
Forsyth.....	4.64 "	1.13 "
Macon.....	3.62 "	0.98 "

23. Jonesboro, Hampton and Forsyth have no other railroad service than that afforded by the Central of Georgia roads. Griffin has railroad connection with the Georgia Midland and Gulf, and is also the junction of the Atlanta and Chattanooga divisions of the Central of Georgia. The distance to Griffin from Cincinnati over the C., N. O. & T. P. to Chattanooga and the Central of Georgia from Chattanooga is 534 miles, only 3 miles greater than by the way of Atlanta. Barnesville is the junction of the Atlanta Division and the Upson County Branch, a 16 mile road to Thomastown. On freights from New York, Philadelphia and Boston, Griffin enjoys the Atlanta water and rail rate of \$1.14 first class, and also the Atlanta water and rail rate from Baltimore of \$1.07, but from Cincinnati its first class rate is as above stated \$1.39. Macon has a rate of \$1.09 from New York, and \$1.02 from Baltimore.

*Case No. 326.*

24. This case was heard last of all, but as the remaining case refers only to one commodity, while this, like the others, extends to all classes of freights, the facts pertaining to it will be stated now. The route here is water and rail from New York and other North Atlantic ports *via* the Clyde Steamship line to Charleston, the South Carolina Railway to Augusta, the Georgia Railroad to Atlanta, and the Atlanta & West Point and Western Railway of Alabama to the destinations mentioned in the complaint, which are Newnan, Grantville, Hogansville, La Grange and West Point, shorter distance stations and Opelika the longer distance point. This route is distinguished by the name:

“THE ATLANTA & WEST POINT PART WATER ROUTE.”



25. The rates are as follows :

From New York, N.Y.		CLASSES.											Per	
" Philadelphia, Pa.		Rates in cents per 100 lbs.											bbl.	
		1	2	2	4	5	6	A	B	C	D	E	H	F
To Atl'nt W'st P't R.R.														
Atlanta, Ga.....		114	98	86	73	60	49	36	48	40	39	58	68	78
Newnan, " .....		131	111	98	83	69	56						78	
Grantville, " .....		147	128	114	97	80	64						94	
Hogansville, " .....		151	131	116	100	81	65						97	
La Grange, " .....		154	135	118	102	82	66						99	
West Point, " .....		142	124	110	93	77	62						88	
West'n R.R. Alabama.														
Opelika, Ala.....		114	98	86	73	60	49	36	48	40	39	58	68	78

Rates taken from tariff issued by R. D. Carpenter, Commissioner of Associated Railways of Virginia and the Carolinas for March, 1892 (How to Ship).

Rates by the way of the Ocean Steamship line to Savannah and the Central of Georgia and connections are substantially the same.

Except Newnan, the stations in this case were considered in the findings under Case 325, relating to traffic from Cincinnati over the Atlanta & West Point all rail route.

26. The distance by the Central of Georgia from Savannah to Atlanta is 295 miles, 13 miles less than the distance from Charleston to Atlanta. The distance from Savannah to Augusta by the Central of Georgia is 132 miles, 5 miles less than the mileage from Charleston to Augusta by the South Carolina road. The distance from Savannah to Opelika by the Central of Georgia through Macon and Columbus is 321 miles, 26 miles less than the distance to Newnan, the first shorter distance point, over the route from Charleston, and only 13 miles greater than the distance from Charleston to Atlanta. The Central of Georgia route Savannah to Opelika is with the exception of the 29 miles from Columbus, wholly in the state of Georgia. Freights can be shipped by the Central of Georgia from Savannah through Opelika to West Point and La Grange, and carried over a less distance than by the route from Charleston or the routes from Savannah through Augusta or Atlanta. It is only 6 miles farther to Hogansville *via* Savannah and Opelika than from Charleston; only 20 miles greater distance to Grantville, and but 44 miles

farther to Newnan. There is a still shorter route from Savannah to Opelika, namely the Central of Georgia to Lyons, 75 miles, the Savannah, Americus & Montgomery, called the "Sam" road, to Americus, 124 miles, and the Central system to Opelika, 93 miles, or 292 miles in all. It is a less distance by this route from Savannah through Opelika to all the shorter distance stations named in the complaint, except Newnan, than from Charleston.

From the port of Brunswick, Ga., Opelika can be reached by the Savannah, Florida & Western to Albany, 169 miles, and the Central of Georgia to Opelika, 129 miles, or a distance of 298 miles through. It is nearer from Brunswick *via* Opelika to all the shorter distance points in this case, except Newnan, than to these points from Charleston *via* Atlanta, and it is only 21 miles farther to Newnan from Brunswick than from Charleston.

But Savannah traffic can also reach Newnan by the Central of Georgia to Griffin and its Chattanooga division over a short distance of 288 miles, 7 miles less than the distance from Savannah to Atlanta and 20 miles less than from Charleston to Atlanta. Newnan is 39 miles from Atlanta, and therefore the mileage from Charleston to Newnan is 347 miles as against only 288 miles from Savannah.

*Case No. 324.*

27. This case relates to rates on fertilizers from Charleston to points on the Atlanta & West Point and Western Railway of Alabama. The route from Charleston is all rail and the same as the rail portion of the route in Case No. 326. The destinations are also the same. This route, denominated The Atlanta & West Point Fertilizer Route, is set out in the diagram on opposite page:

Traffic is shipped under through bills to the various points.



West Point. The rate to Opelika from Wilmington is \$3.89 and from the other ports it is \$4.25 per ton.

31. The following statements show rates by all rail and rail and water routes from New York, Baltimore and Cincinnati to the more important basing points in the territory under consideration.

STATEMENT SHOWING FREIGHT RATES ON CLASSIFIED TRAFFIC FROM NEW YORK, BALTIMORE AND CINCINNATI TO VARIOUS SOUTHERN POINTS NAMED, IN EFFECT AT THE PRESENT TIME.																
Dis- tance.	From	To	Route	Rates in cents per 100 pounds.												W bl
				1	2	3	4	5	6	A	B	C	D	E	H	
800....	New York...	Chattanooga...	Rail and Water...	114	98	86	78	60	49	36	48	40	39	58	68	78
894....	New York	Chattanooga...	All Rail.....	114	98	86	78	60	49	36	48	40	39	58	68	78
884....	New York	Atlanta.....	Rail and Water...	114	98	86	78	60	49	36	48	40	39	58	68	78
877...	New York	Atlanta.....	All Rail.....	123	104	91	77	63	51	38	50	42	41	61	72	82
877....	New York...	Augusta.....	Rail and Water...	96	81	70	58	47	37	28	42	31½	31	43	54	61
802...	New York...	Augusta.....	All Rail.....	104	87	75	62	50	39	30	44	33½	33	46	56	65
802....	Baltimore...	Atlanta.....	Rail and Water...	107	92	81	68	56	46	34	45	37	36	55	65	72
688...	Baltimore...	Atlanta.....	All Rail.....	115	98	86	72	59	48	36	47	39	38	58	69	76
474..	Cincinnati	Atlanta.....	.....	107	92	81	68	56	46	34	45	37	36	55	65	72
474....	Baltimore...	Chattanooga...	Rail and Water...	106	90	88	70	57	46	33	45	37	36	55	65	72
659..	Baltimore	Chattanooga...	All Rail.....	106	90	88	70	57	46	33	45	37	36	55	65	72
336....	Cincinnati	Chattanooga...	.....	76	65	57	47	40	30	20	26	23	19	34	38	38
336....	Baltimore	Augusta...	Rail and Water...	89	75	65	53	43	34	26	39	28½	28	40	51	55
613....	Baltimore	Augusta	All Rail.....	97	81	70	57	46	36	28	41	30½	30	43	55	59
645....	Cincinnati	Augusta.....	.....	107	92	81	68	56	46	34	45	37	36	55	65	72
645..	New York...	Macon.....	Rail and Water...	109	96	88	70	59	48	34	47	35	34	52	60	68
927..	New York...	Macon.....	All Rail.....	117	102	88	74	62	50	36	49	37	36	55	64	73
927..	New York...	Birmingham...	Rail and Water...	114	98	86	78	60	49	36	48	40	39	58	68	78
991....	New York...	Birmingham...	All Rail.....	114	98	86	78	60	49	36	48	40	39	58	68	78
991....	New York...	Montgomery	Rail and Water...	114	98	86	78	60	49	36	48	40	39	58	68	78
1052....	New York	Montgomery	All Rail	114	98	86	78	60	49	36	48	40	39	58	68	78
1052....	New York...	Opelika...	Rail and Water...	114	98	86	78	60	49	36	48	40	39	58	68	78
966....	New York...	Opelika.....	All Rail.....	123	104	91	77	63	51	38	50	42	41	61	72	82



STATEMENT SHOWING FREIGHT RATES ON CLASSIFIED TRAFFIC FROM NEW YORK, PHILADELPHIA AND BALTIMORE TO SOUTH ATLANTIC POINTS NAMED, IN EFFECT AT PRESENT TIME.

		Via All-Rail Routes.—Classes.—In cents per 100 lbs.										
From	To	1	2	3	4	5	6	A	B	C	D	E H F
New York and Philadelphia.....	Charleston.....	78	64	53	38	31	26½	26½	26½	26½	26½	35 36½ 47½
Baltimore .....	Charleston.....	78	64	53	38	31	22	22	22	22	22	35 32 44
New York and Philadelphia.....	Savannah.....	78	64	53	38	31	26½	26½	26½	26½	26½	35 36½ 47½
Baltimore .....	Savannah.....	78	64	53	38	31	22	22	22	22	22	35 32 44
New York, Philadelphia and Baltimore .....	Brunswick.....	81	67	60	54	48	32	32	32	32	32	43 34 64
New York, Philadelphia and Baltimore.....	Jacksonville.....	106	90	76	57	47	39	38	38	38	37½	47 47 72½
Same as above—Via Rail and Water Routes—												
New York and Philadelphia.....	Charleston.....	70	58	48	34	28	24½	23½	23½	23½	23	32 30 43½
Baltimore .....	Charleston.....	60	50	45	34	26	18	17	17	17	17	30 26 34
New York and Philadelphia.....	Savannah.....	70	58	48	34	28	24½	23½	23½	23½	23	32 32½ 43½
Baltimore .....	Savannah.....	70	58	48	34	28	20	20	20	20	20	32 28 40
New York and Philadelphia.....	Brunswick.....	73	61	55	50	45	30	30	30	30	30	40 30 60
Baltimore .....	Brunswick.....	73	61	48	34	27	20	18½	18½	18½	18	32 32 33½
New York and Philadelphia.....	Jacksonville....	73	61	48	34	28	24½	23½	23½	23½	23	32 32 43½
Baltimore.....	Jacksonville....	73	61	48	34	28	23½	22½	22½	22½	22	32 32 41½

STATEMENT SHOWING FREIGHT RATES ON CLASSIFIED TRAFFIC FROM CINCINNATI, O., TO THE SOUTH ATLANTIC POINTS NAMED, IN EFFECT AT PRESENT TIME.

		Classes.—In cents per 100 pounds.										
From	To	1	2	3	4	5	6	A	B	C	D	E H F
Cincinnati, O.....	Charleston...	96	80	75	70	58	46	35	35	27	23	40 40 46
	Savannah....											
	Brunswick...											
	Jacksonville..											

STATEMENT SHOWING PRESENT FREIGHT RATES via TRUNK LINE ROUTES ON CLASSIFIED TRAFFIC TO CINCINNATI, OHIO, FROM THE EASTERN CITIES NAMED.

		Classes.—In cents per 100 lbs.					
From	To	1	2	3	4	5	6
New York or Boston.....	Cincinnati.....	65	57	44	30	26	22
Philadelphia.....	Cincinnati.....	59	51	42	28	24	20
Baltimore.....	Cincinnati.....	57	49	41	27	23	19

32. The complainant, the Georgia Railroad Commission, under authority conferred by the Legislature of the state of Georgia, has jurisdiction of railroad transportation wholly within the borders of that state, but that commission has no control over passengers or property transported wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement for a continuous carriage or shipment, between points in different states or territories of the United States. The defendants in these several cases arrange for the through carriage of property from Ohio river points, or North Atlantic ports, as the case may be, to the destinations named in the complaints. The initial line accepts traffic for through carriage and issues through bills at rates of charge for the whole distance. The carriers concerned receive the property and transport it on to the point of destination where it is delivered to the consignee who pays to the terminal carrier the total expense of transportation, unless it has been prepaid by the shipper, and the money so collected is paid by the carrier receiving it after deducting its own share, to the other carriers composing the through line according to the proportion which by previous understanding or arrangement, each is entitled to receive. The initial carrier of each route is fully acquainted with the terms which each of the other carriers exacts for receiving, forwarding and delivering traffic.

The Western & Atlantic, and others, it may be assumed, have soliciting agents at Cincinnati. The various through lines are represented at important points of shipment, either by their agents or by railroad association officials, or by agents of friendly initial carriers from those points.

33. The following extracts from "Rules Governing the Transportation of Freight," issued by the Georgia Railroad Commission were put in evidence:

"RULE 6."

*"Regulations Concerning Freight Rates.*—The freight rates prescribed by the Commission are maximum rates, which shall not be transcended by the railroads. They may carry,

however, at less than the prescribed rates, provided, that if they carry for less for one person, they shall for the like service carry for the same lessened rate for all persons except as mentioned hereafter; and if they adopt less freight rates from one station, they shall make a reduction of the same per cent. at all stations, along the line of road, so as to make no unjust discrimination as against any person or locality."

"But when there are between any two points in this state two or more competing roads not under the same management or in the same system, then the longer line or lines, in order to give said points the benefit of competition, may reduce the rates between said two points below the standard tariff, without making a corresponding reduction at all stations along the lines of said roads: *Provided*, said reduction shall not make the rates less than the standard tariff rates for the shortest line between the two points. *Provided further*, that before taking effect, the proposed change of rates shall be submitted to and approved by the Commission."

By Circular No. 6 issued April 29, 1880, the Georgia Commission added the following language to "Rule 6."

*"Competing lines, not all within the jurisdiction of the Commission.—*But when from any point in this state there are competing lines, one or more, subject to the jurisdiction of the Commission, then any line or lines which are so subject may at such competing point make rates below the standard freight tariff, to meet such competition, without making a corresponding reduction along the line of road."

The following is an extract from a letter of the Commission dated June 3, 1880, to Virgil Powers, then General Commissioner of the Southern Railway & Steamship Association, now a member of the Georgia Railroad Commission, the complainant in these cases:

"Under the law, freights coming from or going beyond the boundary of the state are not within the jurisdiction of the Commissioners. A shipment from Rome to Charleston, passing over the Rome, Western & Atlantic, Georgia, and South

Carolina Railroads, for example, could not in any way be regulated by the Commissioners. This *line* then is not subject to the jurisdiction of the Commission. It competes with *lines* to the sea, however, which are within the jurisdiction of the Commission. All such cases are intended to be covered by Rule 6 to the end that our own roads and seaports may be able to compete with roads and seaports without the state. Shipments *covered by note 1, over more than one road in this state*, being shipped from any point in this state to another point in the state, are held to be within the meaning of that note—the intention being to give the railroads the largest liberty in fostering the industries of the state—and each road in such *line* can lower rates on such articles without conflicting with Rule 6.”

“Two or more roads in the state desirous of making joint rates between points on their respective roads, may make such joint rates on articles not controlled by Note 1, by taking the rate allowed for an equal distance, if the points were on one road, and applying it to the different roads. For example:

First-class.

Marietta to Atlanta, 20 miles, per 100 pounds.....	20 cents
Atlanta to Macon, 103 miles, per 100 pounds.....	48 cents
Macon to McRae, 76 miles, per 100 pounds.....	39 cents

The sum of these locals for 199 miles would be....\$1.07

But the rate for 199 miles, if on one road, would be per 100 pounds—first-class—70 cents. Now a joint rate of \$1.07 or of 70 cents for 100 pounds could be made or a rate between these amounts—the railroads making their own division of the total rates between themselves.”

In regard to the denial of several of the defendants that they participate in the transportation of property between points mentioned in the complaints under a common control, management or arrangement, upon the facts stated in the findings we decide that the transportation of property between points of shipment and destination named in the complaints is conducted by the connecting defendant lines under a common arrangement for continuous carriage or

shipment within the meaning of the first section of the Act to regulate commerce.

The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.

Traffic is either state or interstate traffic according to its origin and destination. It is shipped by the consignor in the state where the consignee dwells, or it is not. If not, it is interstate traffic, and when carried over two or more lines, it is, by the fact of having been received, forwarded and delivered as one through shipment, transported under a common control, management or arrangement, as the case may be, for continuous carriage or shipment.

The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section was intended to cover all interstate traffic carried through over all rail, or part water and part rail lines. The "arrangement" for continuous carriage or shipment is complete whenever the carriers have arranged for delivering and receiving through traffic to and from each other and such an arrangement is necessarily "common."

This construction of the words "common arrangement" as used in the first section of the law is in line with our decisions in *Boston Fruit & Produce Exch. v. New York & N. E. R. Co.*, 4 I. C. C. Rep. 664; 3 Inters. Com. Rep. 493, and *Mattingly v. Pennsylvania Co.*, 3 I. C. C. Rep. 592; 2 Inters. Com. Rep. 806, and with other rulings of the Commission.

In several of these cases the through charge to intermediate stations is made by the addition of the terminal carrier's local rate to the through rate in effect to a point on its line. This practice has been disapproved of by the Commission in other cases. *Re Tariffs and Classifications of Atlanta & West Point R. Co.*, 3 I. C. C. Rep. 19; 2 Inters. Com. Rep. 461; *Hamilton v. Chattanooga, Rome & Columbus R. Co.*, 4 I. C. C. Rep. 686; 3 Inters. Com. Rep. 482.

The addition of a local rate to a reasonably through rate

in order to fix the through charge to the local station is liable to produce a relatively unreasonable rate to that station. The difference in situation of the basing and local points in respect of through traffic is not properly measured by the local rate for carriage between them. The reasonableness of the added local, *as a local rate*, is not under consideration in a case where the rate complained of is the total charge over different lines. The total rate or charge for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate or charge is made is only material as bearing upon the legality of the aggregate charge, and how any reduction ordered may be accomplished, whether by lowering locals or proportions, is matter for the carriers to determine among themselves.

The rate over through connecting lines is correctly adjusted upon the distance through, and not upon the shorter distances over the several lines. *Coxe Bros. v. Lehigh Valley R. Co.*, 4 I. C. C. Rep. 535; 3 Inters. Com. Rep. 460. Through and continuous lines imply through rates which must be reasonable rates. *Brady v. Pennsylvania R. Co.*, 2 I. C. C. Rep. 131; 2 Inters. Com. Rep. 78.

Where two or more roads forming a continuous connecting line between points in different states bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the Act to regulate commerce by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier. *James & Mayer Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.*, 4 I. C. C. Rep. 744; 3 Inters. Com. Rep. 682.

As these cases all stand upon the charge of violation of the long and short haul clause, the fourth section of the statute, it becomes necessary to consider whether the defendants are justified in their conceded disregard of the prohibitive part of the provision. The point of the defense is that the transportation for shorter distances is under circumstances and conditions which are substantially dissimilar to those sur-

rounding the transportation to the longer distance points ; and this upon the assumption that they may in any case determine the question for themselves in the first instance.

The phrase "substantially similar circumstances and conditions" occurs in both the second and fourth sections of the Act to regulate commerce. An intelligent construction of this phrase involves the duty of ascertaining how it originated in the statute.

The words "under substantially similar circumstances" were in the discrimination clause of the original House Bill reported by the Commerce Committee of the House of Representatives in 1884. In the Reagan substitute bill the words did not appear, nor were they in the bill as it passed the House in January, 1885. The words "under similar circumstances" were used in connection with discriminations in the summary statement of causes of complaint against the railroad system contained in the report of the Senate Select Committee presented in 1886 ; and the phrase "under substantially similar circumstances and conditions" was a part of the second section of the original Senate Bill which was introduced by Senator Cullom.

During the debate upon amendments proposed by Senator Camden and Senator Aldrich some discussion was being had in regard to the word "quantity." Senator Camden proposed that the words "of a like kind of property under substantially similar circumstances and conditions" be substituted for the amendments offered, and the substitute was adopted.

A short history of the framing of the fourth section is given in the opinion of the Commission in *Re* Petitions of the Louisville & Nashville R. Co., 1 I. C. C. Rep. 31 ; 1 Inters. Com. Rep. 278.

The words "under similar circumstances" had been put into a short haul provision by the legislature of Connecticut before the interstate commerce law was enacted and that statute was referred to in the Congressional debates.

The words "under the same circumstances" are in section 90 of the English Act of 1845, and they and also the words "under like circumstances," have been frequently employed by the courts of England.



Whatever use may have been made in English decisions of the word "circumstances" or of the word "conditions," the value of these decisions as precedents to be followed in deciding cases in this country depends greatly upon the similarity of the statutory provision governing the English case to the provision of our law under which the case to be determined is brought. A comparison of certain clauses in English statutes with the second, third and fourth sections of the Act to regulate commerce is shown below :

## EQUALITY CLAUSE.

*English Act.*

Sec. 90 Railway Clauses Act 1845 :

"And whereas it is expedient that the company should be enabled to vary the tolls upon the railways so as to accommodate them to the circumstances of the traffic but that such power of varying should not be used for the purpose of prejudicing or favoring particular parties or for the purpose of collusively or unfairly creating a monopoly, either in the hands of the company or of particular parties; it shall be lawful, therefore, for the company, subject to the provisions and limitations herein and in the special act contained from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or upon any particular portions of the railway, as they shall think fit; provided, that all such tolls be at all times charged equally to all persons, and after the same rate, whether per ton per mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine *passing only over the same portion of the line of railway under the same circumstances*; and no reduction or advance in any such tolls shall be made either directly or indirectly in favor, or against any particular company or person traveling upon or using the railway."

## UNJUST DISCRIMINATION CLAUSE.

*American Act.*

Sec. 2. Act to Regulate Commerce, 1887.

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic *under substantially similar circumstances and conditions*, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.



UNDUE PREFERENCE CLAUSE. UNDUE PREFERENCE CLAUSE.

*English Acts.*

Sec. 2. Railway and Canal Traffic Act, 1854.

Sec. 11. Railway and Canal Traffic Act, 1873.

. . . and no such company shall make or give any undue or unreasonable preference or advantage to or in favor of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, . . .

*American Act.*

Sec. 3. Act to Regulate Commerce.

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

THE 4TH SECTION OF THE ACT TO REGULATE COMMERCE.

“That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.”

At the time of the enactment of this section no similar provision was contained in any English statute. The Railway and Canal Traffic Act of 1888, after re-enacting the undue preference clause of 1854, also provides in paragraph 3, section 27, as follows:

“The Court or the Commissioners shall have power to direct that no higher charge shall be made to any person for services in respect of merchandise carried over a less distance than is made to any other person for similar services in respect of the like description and quantity of merchandise carried over a greater distance on the same line of railway.”

The difference between the English and American acts in respect to long and short hauls is that there the Commission or the Court is *empowered to prohibit* the greater charge for the shorter distance, while here the law itself prohibits the greater charge for the shorter distance when the circumstances and conditions surrounding the transportation are substantially similar, but *empowers the Commission to authorize* the less charge for longer distances.

In England a complaint of greater charge for the shorter haul is triable under the undue preference clause, which is nearly identical with a portion of section 3 of our law, and the English Commission or Court may prohibit such greater charge. But in the United States such a proceeding must be brought under the fourth section of the Act to regulate commerce.

In either country a complaint of undue preference or prejudice must (prior to the English statute of 1888 which shifted the burden to the carrier) be supported by proof of damage which makes the preference or prejudice unreasonable or undue, but in cases brought under our fourth section or long and short haul clause, which particularly describes the act it declares to be unlawful, such proof is not required.

A case of undue or unreasonable preference or advantage, or prejudice or disadvantage includes, as the terms themselves imply, consideration of all those circumstances and conditions which bear, not only upon the transportation by the carrier, but also often relate to the value and volume of the traffic, the favorable or unfavorable location of the places involved in the controversy, character of grades on different divisions, lateral lines, and other essential elements which enter more particularly into matters of relative services and relative rates.

This undue preference clause may justly be termed an omnibus provision, enacted first by Parliament and then by Congress, to prohibit carriers from doing any act which unduly or unreasonably puts one shipper or description of traffic up in the scale of favor or puts another shipper or description of traffic down to his or its disadvantage or wrong. But when the Act to regulate commerce was passed Congress

not only adopted that clause but saw fit to go further and specify that certain charges by the carrier would in themselves constitute wrong. The second and fourth sections of the Act—that is, the unjust discrimination and long and short haul clauses—are provisions of this character. Under these sections the carrier must not charge more for like service nor more for less service rendered in the transportation of a like kind of traffic under substantially similar circumstances and conditions. These provisions describe the offence and limit the circumstances and conditions to be considered to those under which the transportation is conducted. The undue preference clause of the English statute, which was copied into the third section of our law, contains no such description or limitation, nor do the words “substantially similar circumstances and conditions,” or any of them, appear therein.

Considerable variation in language is also found in comparing the English equality clause of 1845 with the second or unjust discrimination clause of our law. That the latter covers much more ground must be apparent to the casual observer, and if it were not for the fact that our second section contains the phrase “substantially similar circumstances and conditions” and the English equality clause in its proviso has the words “under the same circumstances” no reference or comparison would be deemed necessary.

The frequent citation of English decisions in cases affecting interstate transportation, with manifest disregard of vast differences in facts, time, extent of country, methods of trade and transportation, and great dissimilarity in statutory provisions, is ample warrant for the above somewhat extended comparison, and for the following examination of some English cases which have been quoted for the purpose of influencing decisions in this country.

The case of *Attorney-General v. Birmingham & Derby Junction R. Co.* (2 R’y & Can. Cas. 124) was recently cited in a case brought under the second section of the Act to regulate commerce. The English case was decided in August, 1840. The American case was tried in 1890, fifty years later. The railway in the English case was operated under a special act which contained an equality clause similar to the proviso

of section 90 of the English Act of 1845, above quoted. A passenger journeying to London over connecting railways was charged by the first railway for the carriage between two points on its line less than it charged to another passenger who only traveled between the two points on the first carrier's line, but the through charge to London was not less than the charge for the local or intermediate journey. The case was dismissed because prejudice to the latter class of passengers was not shown, and for the further reason that the higher rate charged was not in itself unreasonable. In that case the difference in destination made out the difference in circumstances which the special act required should be "the same." To charge less per mile for greater distance is a common rule of transportation, and its legality is well settled.

The case in which the foregoing was cited related to charging a party of ten or more persons less *per capita* than was charged to single passengers, the journeys of the party and of the single passenger being between the same points, and in the same train; it was brought under a provision of our law which merely specified that the circumstances and conditions should be *substantially similar*, and not *the same*, and its phraseology is entirely different from that of the English Equality Clause of 1845. The fact that charges are not unreasonable *per se* does not prevent their being relatively unreasonable or constituting unjust discrimination under our second section by reason of being unequal. If the circumstances and conditions are substantially similar for like service, the discrimination is declared in the law to be unjust, but the English statute required the circumstances to be the same.

The case of *Hozier v. Caledonian R. Co.*, 1 Nev. & McN. 30, was also cited in the same case as showing that the parties must be shown to be competitors. So, also, in like manner were *Jones v. Eastern Counties R. Co.*, 1 Nev. & McN. 45; *Painter v. London, B. & S. C. R. Co.*, 3 C. B. N. S. 702, and *Infracombe T. C. Co. v. London S. W. R. Co.*, W. N. 289, referred to. All these cases were tried with reference to undue preference or prejudice, which had to be shown to exist before the defendants could be held guilty of unlawful action.

But in the case they were cited to influence no such showing was called for. Can it be said that the cases thus cited might not have been differently decided if tried under a provision of law like our second section, which not only forbids but defines the thing forbidden? The English statutes do not show any such definite rule as is contained in the second and fourth sections of the Act to regulate commerce. Section 90 of the 1845 statute, in its proviso required equality when the carriage is over the *same portion of the line* under the same circumstances. Section 2 of our Act only requires the traffic to be like, the service to be like and contemporaneous, and the transportation under *substantially similar* circumstances and conditions. The provisions are so different in terms that the same set of facts might constitute immunity under the English provision and guilt under our law. Indeed, the Supreme Court of the United States tersely says of the English acts: "These traffic acts do not appear to be as comprehensive as our own and may justify contracts which, with us, would be obnoxious to the long and short haul clause of the Act, or would be open to the charge of unjust discrimination." *Interstate Commerce Commission v. Baltimore & O. R. Co.*, 145 U. S. 263, 36 L. ed. 99. Take the case of *Hozier v. Caledonian R. Co.*, above mentioned. This was a long and short haul case. The decision was under the undue preference clause and to the effect that there must be competition of interest, or the complainant must show personal disadvantage, before he has title to complain, the fact that the complainant had frequent occasion to travel not being sufficient. Would this decision be possible under our fourth section?

The case of *Jones v. Eastern Counties R. Co.*, 1 Nev. & McN. 45 is another passenger case where more was charged from one station than from another station situate a further distance on the same line. The rule was refused because *undue preference* was not shown. The mere suggestion of undue preference was held to be insufficient. Under the fourth section of the Act to regulate commerce, proof of the greater charge for the shorter distance would have been sufficient, for there was nothing whatever in the case upon

which the defendant could base justification under our long and short haul clause. In a brief for defendants in these cases of the Georgia Railroad Commission this case of *Jones v. Eastern Counties R. Co.* is cited to show that through and local traffic constitutes such difference that the greater charge does not unduly prejudice the shorter distance points, and also that when active competition exists at the longer distance point it affords a good reason for making the lower charge. If our long and short haul clause did not exist and the case were brought under the undue preference provision the through and local traffic defense might possibly have some weight, but in the face of the mandate contained in the fourth section the claim of justification on the ground that one traffic is local and the other through is absurd. To allow such claim would be to defeat the object of the section. The rate on through traffic to the longer distance point may be proportionately less than the rate on local traffic to the intermediate point, but under the fourth section it cannot be less in the aggregate. As to competition, the position of the Commission has hitherto been well defined. Some competition does afford justification and some does not, and this matter we expect to treat extensively further on in this report. But the Jones case had in it no element of competition. Whatever was said there in relation to through and local traffic and competition was spoken by the judge at the trial. The decision was that the mere suggestion of preference because of the greater charge for the shorter distance was insufficient.

The same brief cites *Strick v. Swansea Canal Co.*, 16 C. B. N. S. 245, decided in 1864. A proviso in a canal act was similar to the proviso in section 90 of the 1845 statute. It was held competent for the company to carry at a lower rate for a particular individual in consideration of a large guaranteed minimum toll in order to enable them (the company) to enter into competition with a rival line of railway. We think other English decisions in similar cases have a different conclusion, but whether this is true or not it is too manifest for discussion that our second section would forbid the ruling here (*Providence Coal Co. v. Providence & W. R. Co.*, 1 I. C.

C. Rep. 107; 1 Inters. Com. Rep. 363), and moreover, that such a contract would in this country be held in contravention of the common law. *Hays v. Pennsylvania Co.*, 12 Fed. Rep. 309.

In a case lately decided by the English Commission entitled *Liverpool Corn Trade Asso. v. London & N. W. R. Co.*, L. R. 1 Q. B. Div. 120, 45 Am. & Eng. R. Cas. 216, the conflict of English decisions was commented upon as follows:

“The question had several times been mooted whether a rate so low as, when compared with another, to amount *prima facie* to an undue preference, could be justified on the ground that it was rendered necessary by the existence of competitive modes of carriage, whether by land or water. The state of the authorities upon the matter was far from satisfactory. The *dicta* in *Harris v. Cockermouth R. Co.*, 3 C. B. (N. S.) 693, at p. 713; *per* Cockburn, L. C. J., and in *Ransome v. Eastern Counties R. Co.*, 4 C. B. (N. S.) 135, at p. 177, *per* Crowder, J., are I think very difficult to reconcile with the decision in *Budd v. London & N. W. R. Co.*, 4 R. & C. T. Cas. 393, *n.*; 36 L. T. (N. S.) 802. The manner in which the question how far the necessities of competition will justify preferential charges was touched upon in *Garton v. Bristol & Exeter R. Co.*, 6 C. B. N. S. 639, throws no additional light upon the subject. Budd’s case, 4 R. & C. T. Cases, 393 *n.*, 36 L. T. (N. S.) 802, is open to the further observation (for which I am indebted to Sir F. Peel) that it is in conflict with the subsequent Scotch case of *Murray v. Glasgow & S. W. R. Co.*, 4 R. & C. T. Cas. 456, 11 Court Sess. Cas. 4th Series, 205, in the court of session, and the case of *Denaby Main Colliery Co. v. Manchester, S. & L. R. Co.*, 14 Q. B. Div. 209, 11 App. Cas. 97, 26 Am. & Eng. R. Cas. 93, in the English court of appeals, where it was laid down that an action will not lie to recover overcharges made in violation of the provisions of the Act of 1854, against undue preferences. When the Denaby Main case, 14 Q. B. Div. 209, 11 App. Cas. 97, 26 Am. & Eng. R. Cas. 93, was in the House of Lords the question was not decided, and the state of the authorities has been discussed by Cave, J., in his judgment



in *Lancashire & Y. R. Co. v. Greenwood*, 21 Q. B. Div. 215, 55 Am. & Eng. R. Cas. 537."

In a still more recent case decided in the English Court of Appeal, the above mentioned cases of *Harris v. Cocker-mouth*, *Denaby Main Colliery Co.*, *Ransome v. Eastern Counties R. Co.*, and also *Evershed's Case*, L. R. 3 App. Cas. 1029, were discussed; and the case of *Budd* was held to be no longer law.

The ruling on the main question presented by the appeal was that the railway commissioners or the court *may* take into consideration the existence of a competing route between the same points in considering a case of alleged undue preference.

*Phipps v. London & N. W. R. Co.* (1892) 2 Q. B. 229.

In that opinion *Lord* Herschell said of the Equality and Undue Preference clauses :

"Where there is a breach of the equality clause, no doubt you may sue to recover the difference on the basis that you can compel the railway company to pay you back anything which you have paid over what, for precisely the same service, they have charged to another. But under the Railway and Canal Traffic Act, as was pointed out in the House of Lords, the company have their option. They may put up one charge, they may put down the other. It is not an equality clause; it is only a clause relating to undue preference or advantage."

"The words of the equality clause have no elasticity at all; there are no outside circumstances to be taken into consideration, and it is not a question of regarding the position of the one trader as compared with the other, and then saying whether there is any undue preference. It is an absolute rigid equality which is demanded by the statute."

These words of the learned English judge clearly illustrate what we have said in relation to our own second and fourth sections as compared with the undue preference section which was copied from the English statute into our law.

It is unnecessary to continue this examination. In a case purely of alleged undue preference or prejudice the English cases have direct application. Even in cases under our second and fourth sections, English cases brought under the undue preference clause in which the decision has held undue preference to exist, have value as showing how strictly the English Commission or court has applied the broad lan-



guage of the clause to a particular set of facts, but when English decisions under the undue preference clause are cited by a carrier in justification of its action under the strict language of our second and fourth sections, the citations have greatly diminished force. These sections apply only against rates in specific cases, but the undue preference clause or third section is inclusive; it applies both to rates and facilities, and says generally to the carrier, you shall not in any manner unduly prefer one person or kind of traffic over another, and leaves it to the Commission or the court to say when the undue preference is given. In the second and fourth sections what is unlawful is clearly defined, the circumstances and conditions of the transportation being similar in substance. We think, therefore, that while English cases are valuable as defining undue preference or prejudice their value is greatly limited in cases where the statute itself describes the offense it declares unlawful.

In regard to such elements of transportation as through and local traffic and cost of service we cannot do better than reiterate what was held by the Commission in *The Louisville & Nashville R. Co.*:

“The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor, that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

“Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.”

Disproportionate expenses of carriage and great variation in the volume of traffic to various points are ever present in

railroad service, were within the knowledge of Congress when the section was framed, and must of necessity have been considered as not constituting substantially dissimilar circumstances and conditions, in other than extraordinary cases, for under the contrary view it is manifest that in a large majority of cases the design of the section would be defeated. As above stated, a defense of the higher rate for the shorter haul which is based upon cost must amount to a practical demonstration that the short haul traffic is exceptionally expensive or the cost of the long haul transportation exceptionally low.

It is unnecessary to go over ground which was so carefully covered by the Commission in the Louisville & Nashville opinion, and we will at once proceed to the main question: What are the circumstances and conditions which a carrier may in the first instance take into account in fixing rates for longer and shorter distances over its line?

Under necessary and well settled rules of railroad transportation essentially different circumstances and conditions constantly arise. The section says, "The transportation of a like kind of property under substantially similar circumstances and conditions." A barrel of flour is a like kind of property with a carload of flour, but they are different units of quantity, and the transportation of a carload is not under substantially similar circumstances and conditions with those which apply to the shipment of a barrel, or, under present rules of transportation, any number of barrels less than a car load. Other examples would be one horse and a carload of horses, furniture knocked down or set up, small lots of grain in sacks or loose in carloads, and so on through the great variety of articles of commerce which seek carriage in different quantities and forms.

It is proper also to recognize the right of a carrier to charge different but duly published rates according as its liability is diminished by proper conditions stated upon the bill of lading accepted by the shipper or upon the ticket accepted by the passenger whereby the carrier, under such special contract, secures to itself some lawful pecuniary or economic advantage. These and other transportation meth-

ods not necessary or possible to specify constitute many kinds of essentially dissimilar circumstances and conditions arising upon its own line by which a carrier may rightfully be governed.

Circumstances and conditions affecting transportation also arise through competition with other carriers for business; that is, circumstances and conditions which do not wholly arise upon the carrier's own line.

The necessity for a construction of the fourth section of the Act became apparent almost immediately after the organization of the Commission. A large number of applications for relief were then filed by roads operating in all sections of the country. Investigations were held in many places and on June 7, 1887, the applications were disposed of in the opinion above quoted from, the Louisville & Nashville case, and it was intended that the construction there laid down should be sufficient for all cases based on similar grounds which might thereafter arise under the fourth section; but the construction put upon the statute at that time seems to have been misapprehended in some essential particulars by carriers.

The Commission held in that case that the phrase "under substantially similar circumstances and conditions" in the fourth section *is used in the same sense* as in the second section; and under the qualified form of prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for the shorter distance. The Commission said in regard to the employment of the same qualifying phrase in both sections 2 and 4: "It will be observed that the phrase is precisely the same; and there can be no doubt that the words were carefully chosen, probably because they were believed to express more accurately and precisely than would any others the exact thought which was in the legislative mind. And in this section (2) as well as in section 4, the phrase is employed to mark the limit of the carrier's privilege; its privilege, too, in respect to the very subject matter

with which section 4, where it is employed, has to do, namely, the charges for transportation service."

In all cases under the second section the actual facts are of necessity entirely within the carrier's knowledge. The qualifying phrase, under substantially similar circumstances and conditions, used in the same sense in the second and fourth sections, has no greater force or different meaning in the one than in the other.

In reviewing what was held in the Louisville & Nashville case the precise wording of the statute must not be overlooked. The first part of the section forbids carriers to charge more for the shorter than for the longer haul when the transportation is under substantially similar circumstances and conditions. The other portion of the section, that which relates to a relieving order by the Commission, permits such an order only for the purpose of a lesser charge for the longer haul, but the discretion of the Commission is not limited, except that the case must be special—must present a question requiring authoritative action. The Commission said in that case that if the section had passed as it once stood without containing the qualifying phrase "under substantially similar circumstances and conditions" the Commission might have exercised its discretion in all cases where the circumstances and conditions appeared to be different, and it would have entered upon its duties "with a distinct understanding of the task imposed, even though its adequate performance might have been out of the question; but modified as it now stands the necessity for a relieving order is greatly narrowed, it being obvious that no order is needed to relieve against the operation of the statute when nothing is done or proposed which it makes unlawful."

But the Commission clearly foresaw at that time that a construction of the statute which would deliver even questions purely of fact unto the carrier's judgment in the first instance, must be accompanied by a statement of principles on which such judgment must be based or the greatest confusion and litigation would follow, and thereupon proceeded to lay down for the guidance of carriers rules which would

not warrant them in making charges greater for shorter distances than those established for longer hauls.

The rules limiting the judgment of the carrier in respect to greater charges for shorter hauls were briefly stated as follows:

“Sixth: The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic, and that which is given the more favorable rates is not.

“Nor is it sufficient justification for such greater charge that the short haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

“Nor that the lesser charge on the longer haul has for its motive the encouragement of manufacturers or some other branch of industry.

“Nor that it is designed to build up business or trade centres.

“Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centres or industrial establishments have been built up.

“The fact that long haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.”

The Commission might have stopped there and directed the carriers to withdraw their applications, leaving further construction of the section to come up in cases of complaint or subsequent application for relief. But before laying down any principles except the construction as to the carrier's right of primary determination, it said:

“It is manifestly important to the public interest, as well as

to that of the railroads themselves, that mistakes shall as far as possible be avoided. It is also important that the general rule laid down by the statute be strictly complied with whenever compliance appears to be fairly practicable, and that carriers direct their attention more to the feasibility of coming into conformity with it than to the possibility of finding reasons upon which to ground exceptions. They are therefore entitled to the benefit of such conclusions as we have already reached upon the general merits of their applications that they may be guided thereby in the preparation of their tariffs respectively. In giving these conclusions we limit ourselves strictly to the cases presented and leave out of view such other grounds of relief, if any, as are not yet formally brought forward."

The Commission then proceeded to discuss and lay down the rules above set forth. It being apparent that competition of various kinds would constitute a main subject for consideration in cases of long and short hauls the Commission discussed the force and effect of the competition of carriers not subject to the law, and also that of carriers subject to its provisions, for the purpose of arriving at such general conclusions in regard thereto as would properly direct carriers in establishing rates for longer and shorter hauls.

The Commission said generally on the subject of competition as creating dissimilarity in circumstances and conditions that Congress in rejecting the fourth section as introduced in both of its branches, and insisted upon in the bill passed by the House, "understood that they were not adopting a measure of strict prohibition in respect to charging more for the shorter than for the longer distance, but that they were, instead, leaving the door open for exceptions in certain cases, and among others in cases where the circumstances and conditions of the traffic were affected by the element of competition, and where exceptions might be a necessity if the competition was to continue; and water competition was beyond doubt especially in view."

But the Commission immediately said in that connection that Congress must be supposed to have allowed this because

the public interest required it, and "that only legitimate open and fair competition was meant, not everything that has been done under the name of competition and which in many cases has been equally destructive of public and private right. Among common abuses have been the granting of special favor in exceptional rates, rebates, drawbacks, etc., all of which are now expressly prohibited by law when they assume the form of unjust discrimination. There has also been favoritism between places and communities, as a result of competition; but this is no longer permissible." It was also expressly stated in the opinion that the prohibitions against unjust and unreasonable rates and unjust discriminations apply as well to cases under section 4 as in other cases.

In taking this view of the meaning of the statute the Commission undoubtedly relieved itself of many onerous duties in the consideration of cases arising on applications for orders granting leave to charge less for the longer distance on the score of competition; and the difficulty of discharging these duties was clearly set forth in the beginning of the opinion. By defining the kinds of competition which might entitle the carrier to make less charges for the longer distances and thereby justify consequent greater charges on its line for shorter hauls the Commission has recognized that competition of that character constitutes a state of facts of which the carriers could judge in the first instance without giving color of right to any charges on the competing line.

Now what kind of competition did the Commission hold might, by warranting a lesser long haul charge, justify carriers in establishing greater charges for shorter hauls? The answer is: Competition with water carriers. Competition with foreign railroads. Competition with railroad lines wholly in a single state. Such carriers are not subject to the law. They are independent of all regulation by the Federal authority, and consequently the carrier, subject to such regulation, in first determining for itself to charge less for the longer distance because of such competition, does not by meeting the competitive rates give color of right to rates on the other competing lines, for the law does not regulate such rates.



The Commission described one other kind of competition which might entitle a carrier to charge less for a longer haul and thereby justify short haul charges. This was in "rare and peculiar" cases of competition with a railroad subject to the Act where a strict application of the general rule of the statute would be destructive of legitimate competition. This class of cases was illustrated by two instances of very circuitous routes; one being where the competing lines run from the point of shipment, one in a direct line to the longer distance point while the other runs in the opposite direction and its traffic reaches the longer distance point by taking a wide circuit. This was the Pittsburgh or Youngstown case. The other illustration was that of roads running north and south delivering to connections at terminals or intermediate junctions, and competing to and from a common market with direct east and west roads which by reason of greatly less distance make the rates to the longer distance point.

The belief was indulged in that the carriers by strictly observing the limitations put upon their judgment in that opinion, and at the same time obeying the other provisions of the statute, would find little necessity for applying to the Commission for relief; that the operation of the law upon two carriers subject to its provisions would render competition between them an infrequent cause for seeking aid in an order relaxing the rule. But from the outset the Commission realized that the provision for relief in the fourth section would promote the interest of interstate commerce and uphold the rights of carriers by preserving competition between carriers subject to the Act which the Commission should ascertain to be legitimate. The opening part of the opinion under consideration states the view of construction which was thereafter discussed and approved: That "the order for relief would be needful only when the case was not one of *plainly* dissimilar circumstances and conditions, but in which, nevertheless, there might be reasons and equities that would sanction such greater charge."

Further on the Commission said:

"The latter clause in the same section which empowers the



Commission to make orders for relief in its discretion does not in doing so restrict it to a finding of circumstances and conditions strictly dissimilar, but seems intended to give a discretionary authority for *cases that could not well be indicated in advance by general designation*, while the cases which upon their facts should be acted upon (by the carriers) as *clearly exceptional* would be left for adjudication when the action of the carrier was challenged. The statute becomes on this construction practical and this section may be enforced without serious embarrassment."

It would be impossible to "indicate in advance by general designation" all cases of competition between carriers subject to the Act that should or should not come under the general rule. Competition between carriers subject to the Act does not constitute plainly dissimilar circumstances and conditions, for reasons which we shall now proceed to state, and the duty of primarily determining the question is laid upon the Commission by the fourth section of the statute.

The necessity for supplemental construction at this time arises from the fact that carriers in the operation of their lines have not held strictly to the principles laid down in the Louisville & Nashville opinion, under a possible misapprehension of the scope of that decision.

In stating in that opinion what kinds of competition might entitle the carrier to make lesser long haul charges, or that create dissimilar circumstances and conditions under which it would be justified in charging more for shorter hauls, we now think, in the light of more than five years operation of the statute, that the Commission should not have included in such statement, "rare and peculiar cases of competition between railroads subject to the Act where a strict application of the general rule of the statute would be destructive of legitimate competition," if this language in the opinion was fairly susceptible of the interpretation which the carriers have put upon it. As an exception it was not consistent with the otherwise harmonious theory on which the whole opinion was based.

It constituted an exception to the clear reservation for the

primary action of the Commission in cases involving competition between carriers subject to the Act which is implied in the fourth section. Because the instances of such "rare and peculiar" cases cited in the opinion are such as indicate a hardship that the Commission would not fail to recognize and by an order under the provisory clause relieve, if applied for, was no good ground for permitting the carriers to determine for themselves what cases of such competition are *rare and peculiar* or when any cases of strife for traffic between carriers subject to the law will, if the strict rule of the fourth section is applied, be "destructive of legitimate competition." From the fact that many carriers have, as was natural, expanded the permission restricted to "rare and peculiar cases" into a privilege to presume that whenever they engage in competition with other carriers subject to the Act the case becomes "rare and peculiar," the exceptional ruling has become inoperative, delusive, and opened the door to many evasions of the statute. We think there is nothing in the statute which warranted the exception.

The prohibitory part of the fourth section of the statute is followed by this proviso :

"That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the Commission may from time to time prescribe the extent to which said designated common carrier may be relieved from the operation of this section of this Act."

Force must be given to this part of the section as well as the other.

In the framing of the fourth section it appears that a proviso of this character was made a part of it before the words "under substantially similar circumstances and conditions," were inserted in the preceding general rule. The debate indicates that the then object of the proviso was to give the Commission substantially discretionary power to relieve car-

riers from the operation of the general rule. The subsequent incorporation of the clause, "substantially similar circumstances and conditions" in the prohibitory part of the section, the same phrase being already in the second section, could only have been intended to provide for a class of cases where the carrier is capable of determining for itself whether the transportation conditions are similar, and this it can easily do when the competition is with carriers not subject to regulation under the Act. If it had been intended by that phrase to cover all cases of dissimilar circumstances and conditions apparent and actual, regardless of whether fairness and justice to carriers, shippers and localities demanded the exceptional charge, then the proviso would have been stricken out when the similarity clause was inserted. But the debates indicate that both the proviso and the clause were regarded as necessary, and that the proviso would apply to a class of cases not intended to be covered by the similarity clause. In the absence of anything in the phraseology of the statute which clearly indicates to what class of cases these two provisions respectively apply, it becomes necessary to seek for an interpretation that is reasonable and will give effect to both clauses. A statute must, if possible, be so construed as to give effect to all its provisions.

The competition of carriers subject to the Act with carriers not amenable to its provisions plainly constitutes dissimilar circumstances and conditions which justify a reasonable departure from the rule of the fourth section if the competition be actual and controlling in respect to traffic important in amount. This includes the competition of independent water lines, independent state railroads, and foreign railroads, where they have not so connected themselves with the carriage of interstate traffic as to thereby become subject to the Act.

Of the similarity or dissimilarity in the circumstances and conditions which originate in real and tangible competition with lines not subject to the Federal authority the carrier is obviously well qualified to judge and determine for itself in the first instance. Such circumstances and conditions have direct bearing upon traffic over the line and are not subject

to qualification by a multitude of other facts pertaining to lines of other carriers subject to Federal regulation. For instance, the competition between rail carriers both subject to the Federal law for business between two points does not, *because it exists*, constitute circumstances and conditions of transportation which one carrier is competent to say will warrant exceptional rates on its road, even though the other may have the shorter line. Such a case presents questions that can only be properly determined by the regulating authority created by the law. Rates on the competing line may or may not be lawfully adjusted, and the low rates to the competitive point may be remunerative on the shorter line but unreasonably low and unprofitable over the longer line. This is a case for investigation by the Commission, not only with reference to the long line, but it also involves a scrutiny of the rates of the competing road and the reasons which cause the low rates to be charged. Another consideration is that the carriers if left to themselves are likely to force the already low rate lower and lower, whether it originally paid both carriers or not, until finally a point is reached where other traffic on both lines is burdened with part of the cost which properly belongs to the business competed for; charges to many points on both lines are thrown out of just relation, and, what is still worse, the competition which has become illegitimate is likely to have so affected rates of roads not interested in the original strife, but which have felt obliged to give relatively lower rates to competitive points on their lines in the same territory, that they, too, stand in unlawful light. This is illustrated to a considerable extent in the territory now under consideration. Competition unrestrained will naturally develop into reckless warfare, or, through that combination which is the logical result of destructive or ruinous competition, perpetuate a system of rates which is burdensome to many communities while it unduly favors a few, and yet brings no additional returns to the carriers concerned. The lawmaking power never intended that competition should have such unrestrained and disastrous sway before the remedy of regulation should be invoked and applied.

But competition between carriers subject to the Act to reg-

ulate commerce *may* furnish grounds for disproportionate rates on the line of one of the carriers, and when such a railroad company meets a stronger competitor in the strife for business between the same points, such a case should, if the weaker line will gain some profit from the competitive rate, be brought to the attention of the Commission as a *special case* for relief under the proviso of the fourth section. The Commission will investigate the matter and, having in view the rights of both carriers and their duties to the persons and communities they serve, equitably determine the questions involved.

The regulation provided by the Act to regulate commerce is not intended to limit or restrict, but rather to preserve and encourage legitimate competition between carriers subject to its jurisdiction; but the legality of such competition should in no case be arbitrarily determined by the competitors themselves. Those who are subject to the law can never find excuse for disobedience in the disobedience of another, and neither should be allowed to judge of what constitutes obedience on the part of another. Competition between carriers subject to the Act, to be legitimate, must be based upon actual compliance with the provisions of that law. When the competing carrier is not subject to the Act that fact alone may constitute a substantial dissimilarity in circumstances and conditions, because the rates of the competing carrier are not subject to regulation under the statute, so that there is no room for presumption or doubt in such a case.

In such a case it is easy to see that it was wise for Congress to allow the carrier to act independently of the regulating body in deviating from the general rule, but in a case where both carriers are subject to the statute there can be no presumption of the existence of facts that would warrant a departure from that rule, and the question whether they do exist or not must necessarily be a mixed question of fact and law depending on various considerations, as hereinbefore shown, which the regulating body must pass upon; and complicated as such a question is herein shown to be, it would be contrary to all analogy to allow one of the parties in interest to determine for itself. It would be a novelty in the drafting

of statutes to charge a person who is made subject to the law with the solution of such difficult and intricate problems as must arise under the fourth section of this statute on the claim of a right, arising from competition with another carrier also subject to that law, to disregard its general provision, and which Congress foresaw could only receive just solution by wholly disinterested minds. The protection of the law extends equally to carriers and the public, and no other interpretation of its provisions than that which awards even handed justice to both is admissible.

The line between the right of a carrier to conclude for itself in the first instance and the necessity of applying to the Commission for relief we think is sharply drawn at the point where the carrier is manifestly unable to rightfully decide.

We think that in no case is there any presumption of dissimilarity of circumstances and conditions where the competing lines are both subject to the Act; and there being no such presumption neither road can deviate from the general rule on its own motion, but must apply for relief under the proviso clause of the section, and the burden will rest upon the road seeking such relief.

Under that proviso there seems to be no limitation upon the power of the Commission to grant relief when, upon consideration of all the facts the Commission is satisfied "that the interests of the commerce of the country and common fairness to the common carriers require that an exception should be made."

It is difficult to see why this proviso is not broad enough to enable the Commission to relieve all cases of hardship under the fourth section arising from competition between carriers subject to the Act, including many of the embarrassments now felt by American carriers in competition with Canadian carriers which may be subject to the Act in respect to the traffic competed for.

The foregoing has been especially directed to the competition of carriers subject to the Act between the same points.

The same course should be taken when carriers meet the competition of other lines which carry traffic to the same point but from different points of origin. The strife for

trade between different markets seeking transportation for like commodities to the same locality is undoubtedly one of the most potent commercial forces of our time. But a common carrier cannot rightfully assume that this or that market upon its line is entitled as a matter of right, in shipments to a given point, to rates which another carrier sees fit to give from a market on its line to the same point. It does not follow that markets competing for trade in the same territory must enjoy similar rates in order to compete with each other, and the carrier which serves one market has no right to assume that substantially equal rates must be given. Market competition does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for a shorter than for a longer distance over their lines. To determine the force and effect of such competition involves commercial considerations peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation by the carrier is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of competing localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long-haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines. Under the fourth section where doubt exists as to the existence of facts which would legitimately force a lower rate for the longer haul, and we think doubt must always exist where the competing carriers run from different markets, the carrier cannot assume to solve it. The propriety of applying to the Commission for relief in such a case is apparent.

To repeat the idea above discussed, the competition of carriers subject to the law between the points mutually served, or competition between different markets to the point where competing lines join, does not merely because it exists make out the dissimilar circumstances and conditions upon which



a carrier may on its own motion base a lower rate for one point, while it keeps in effect a higher rate for a shorter distance over its line. They are not presumptively dissimilar. Investigation by the Commission may, with no wrong to the carrier, but with permanent benefit to the places they serve, result in bringing charges to all points in the immediate territory into closer conformity with the law, and render a lower rate for the longer distance unnecessary, or else furnish sound reasons for its being sanctioned. Regulation having been provided by Congress, its application is not only constant, but the machinery of the law is at all times available by the carriers governed, as well as by the public which the carriers serve.

The *special cases* referred to in the proviso of the fourth section, in which the Commission is empowered to make investigation and grant relief from the requirements of the general rule, include all cases that primarily involve questions of regulation over the respective competing lines. The line which forces the lower rate may itself be guilty of disproportionate rates. Such disparity may not be so great as to have caused a complaint to the Commission by the patrons of the line, notwithstanding the burdens imposed may be manifest, but when rates so adjusted are made the basis of another line's departure from the rule of equitable charges, the situation imperatively calls for the intervention of the regulating authority, both in the interests of the connecting roads and of their patrons.

A construction of the law which allows a carrier to determine for itself in every instance whether the lower rate for the longer distance is warranted, is liable, when such lower rate is adopted by it, to cause another carrier serving the same territory to feel justified in establishing a lower rate for the longer distance on its line to the same point or to a different point appearing to require relatively favorable rates; and is also liable to cause other carriers in the same section to take similar action; thus creating an artificial or abnormal situation which constantly provokes belief and claim of unjust discrimination and endless controversies between shippers and carriers. Such a situation, left unchanged, presents a



railroad problem most difficult of solution. But a construction of the law which will compel a carrier, before putting in a lower rate for the longer distance, to seek relief by a method which will involve a careful examination of the traffic conditions as to all the lines competing for carriage in the same territory, would tend to promote a solution more beneficial for all parties.

A concise statement of this construction of the fourth section on the point above discussed is: The carrier has a right to judge in the first instance whether it is justified in making the *greater charge for the shorter distance* under the fourth section in all cases where the circumstances and conditions arise *wholly upon its own line* or through competition for the same traffic with carriers not subject to regulation under the Act to regulate commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar, and carriers must not charge *less for the longer distance* except upon the order of this Commission.

Aside from overruling the "rare and peculiar cases" exception, this construction is no departure from previous rulings and is not new. Soon after the Louisville & Nashville opinion was promulgated by the Commission, Judge Pardee of the United States Circuit Court approved this construction in *Missouri Pac. R. Co. v. Texas & P. R. Co.*, 31 Fed. Rep. 527. Upon *ex parte* application of the receivers of the defendant for advice in relation to the construction of the fourth section of the Act to regulate commerce, the court held:

Under section 4 of the Interstate Commerce Law, relating to the charges for the long and short haul, it seems that where the circumstances and conditions are dissimilar there is no prohibition; where the circumstances and conditions are similar the prohibition attaches; and that where it is difficult to point out clearly the circumstances or conditions which produce dissimilarity, the doubt should go in favor of the object of the law, and the circumstances and conditions should be taken as substantially similar. Where the circumstances and conditions are similar, or substantially similar and the result to the carrier is injurious, relief can be had only through the Commission.

Neither is our view in serious conflict with the opinion expressed by Judge Deady in *Ex parte Koehler*, 1 Inters.

Com. Rep. 317. The *Ex parte* Koehler cases all involved water lines and the rulings were made with especial reference to the influence of competition by that mode of carriage; and the language of the judge in the course of discussion must be construed with like reference.

The case of the Interstate Commerce Commission *v.* Atchison, T. & S. F. R. Co., 50 Fed. Rep. 295, was brought to enforce an order of the Commission issued against the defendants in a proceeding brought before it by the San Bernardino Board of Trade. In the case before the court the defendants took a great deal of additional evidence upon the subject of water transportation at the longer distance point. The court discussed the evidence at considerable length and held that such means of transportation actually exists, is actually and actively seeking the traffic, and that shipments by water are increasing. The decision turned upon this showing, and the language of the court in the course of the discussion must be held to have been made with reference to the facts therein set forth. The principle stated by the court that to render lawful a greater charge for a shorter than for a longer haul, under section four of the Act, it is not necessary to first obtain authority of the Commission; that such charge is lawful if the circumstances and conditions are not in fact substantially similar and the carrier may determine for himself, subject to a liability for violating the Act, if, on investigation, the fact be found against him, is clearly in line with our view as to competition by water lines, or the competition of foreign railroads, or the competition of independent state railroads. The decision was not rendered upon any controlling consideration of competition between carriers subject to the law.

In the case of Osborne *v.* Chicago & N. W. R. Co., 48 Fed. Rep. 49, Judge Shiras in charging the jury, said:

“Whether the railway company was justified by a cut rate, making what was called in argument ‘illegitimate competition,’ and circumstances of that kind which grow out of the handling and management of the railroad business of the country, by other competing lines, and its effect upon the business of the defendant company, in the judgment of the court, is a question that cannot be submitted to you. Questions of that kind are for the

judgment and determination of the board of commissioners appointed under this Act, and the courts and juries, when they are called to act upon particular cases arising under this Act, where it is denied that the law has been violated, are only authorized to determine the question whether in the service rendered, the character of the property, its conveyance, and other facts which inhere in the carrying of freight upon the particular line which is charged with wrong doing, there existed dissimilar circumstances and conditions relieving this company from the charge of collecting a larger rate for the shorter haul over the same line, in the same direction, and under otherwise substantially similar circumstances and conditions."

This decision distinctly follows the construction that where doubt exists, the circumstances and conditions should be taken as substantially similar. Doubt always exists as to the legitimate force of the competition between carriers subject to the law which one of them claims to compel the making of exceptional charges over its line. The law restrains both alike and the true presumption is that they have equal advantage under the law. But if hardship is encountered then relief, temporary and continuing, may on proper showing be obtained under the proviso of the fourth section.

In a case where the competition of a state railroad which in no way made it subject to the Act, was alleged to justify the lower rate this Commission sustained the defendant and laid down the following principle:

"The words 'substantially similar circumstances and conditions' as found in the second and fourth sections of the Act to regulate commerce in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example, if the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him; or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent state railroad, *which is not subject to the Act to regulate commerce*, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line." *Business Men's Asso. v. Chicago, St. P., M. & O. R. Co.*, 2 I. C. C. Rep. 52; 2 Inters. Com. Rep. 41.

This ruling excludes the competition of carriers subject to the Act from the carriers' judgment.

The distinction herein made between the competition of carriers subject to the Act, and the competition of such a carrier with those not subject to the Act, is also applicable to competition alleged in cases under the second and third sections, and the Commission so considered in *Harwell v. Columbus & W. R. Co.*, 1 I. C. C. Rep. 237; 1 Inters. Com. Rep. 631.

In a case where railroad competition was alleged by the respondent to justify the exceptionally lower rate, which came before the Commission for investigation in July, 1888, it appeared that the lower rate was caused by what the respondent termed unfair competition by the competing line, and the evidence tended strongly to show that the long haul rate was unreasonably low. *Re Chicago, St. P. & K. C. R. Co.*, 2 I. C. C. Rep. 231; 2 Inters. Com. Rep. 137. In its annual report to Congress for that year the Commission said of its decision in that case:

"The reasoning seemed strong and was certainly plausible. But the question involved was a question of the construction of the Act; its answer was to be arrived at on consideration of what was probably the legislative intent. It was seen that the circumstances and conditions relied upon as entitling the carrier to make the exceptional rates were not circumstances growing out of natural causes; they were not the outcome of competition by water routes; there was no peculiarity of the line which would make the rates at the termini and at other stations relatively just; the only dissimilarity in the circumstances and conditions which attended the making of the rates at the different points was that at the termini there was sharp railroad competition and at the intermediate stations there was not.

*"But this was a state of things that, at the pleasure of the railroad companies acting generally, or even of single companies disposed to act in hostility, might be made to exist at any point of railroad connection in the country; and if the greater charge on the shorter haul was admissible in the case under investigation the rule of the fourth section would be of no practical value whatever. Any railroad company might by its action absolve a competitor from its obligation, and be itself absolved in return. The legislature never intended this consequence. It did not intend, as the Commission believed, that the carriers subject to the law should at pleasure thus make the rule of the statute ineffectual.*

"The carrier under investigation conformed to this conclusion and graded its rates accordingly, and the objectionable rates made by the carrier complained of were also soon discontinued."

It may not be out of place here to refer to a late English construction of the law of undue preference contained in the Act of 1888 as applied to a case where competition with other railways between the same points and also water transportation was relied upon to justify a lower charge for a longer distance, but the shorter was not included within the longer distance.

A clause in the statute relating to the public interest and interests of the railways is carefully construed. As to the public interest it was held that the fact that it is seldom not in the interest of the public to have a choice of competing routes does not decide the question. "*It is clear that the Act contemplates the possible existence of competition which may not be in the interests of the public although it be effectual to secure traffic.*"

After considering the words "public interests" the following rules are stated in the English opinion: "It is, however, as a general rule, against the public interests that uncertainty should be introduced into trade by frequent or violent or *arbitrary* changes of the circumstances under which people engaged in business have to carry it on and to make their living. It is, as a broad general rule, *against the public interest that artificial circumstances*, which at the will or caprice or for the self interest of any man, or body of men, may be swept out of existence as lightly as they were perhaps created, *should be permitted to interfere with the natural course of trade.* Liverpool Corn Trade Asso. v. London & N. W. R. Co., L. R. 1 Q. B. Div. 120, 45 Am. & Eng. R. Cas. 216.

This English case clearly illustrates our construction of the law that the existence of competition between carriers subject to the Act does not justify them in the first instance in charging a lower rate for the longer distance. We do not think that case a proper one to cite as a precedent in a long and short haul case under our statute, for the circumstances of carriage are very different. It was purely a case of relative rates of undue preference between markets, but it shows how strictly the English authorities interpret the broad language of their law in accordance with the evident intent of the law-making power.

A proceeding known as the "Import Rate Case," and instituted by this Commission to enforce its order restraining carriers from charging less for services rendered in carrying import traffic from American seaports, when shipped from foreign ports under through bills, than they charge for carrying domestic shipments of like kind of traffic between the same points was decided in the United States Circuit Court, Southern District of New York, on October 5 of the present year. The long and short haul question was also to some extent involved. Wallace, J., writing the opinion, which sustains the ruling of the Commission, in conclusion said:

"The Interstate Commerce Act would be emasculated in its remedial efficacy, if not practically nullified, if a carrier can justify a discrimination in rates merely upon the ground that unless it is given the traffic obtained by giving it would go to a competing carrier. A shipper having a choice between competing carriers would only have to refuse to send his goods by one of them unless given exceptional rates to justify that one in making the discrimination in his favor on the ground of the necessity of the situation."

We also refer to the decision of the Commission in the case of *James & Mayer Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.*, 4 I. C. C. Rep. 744; 3 Inters. Com. Rep. 682. In that case the defendants sought to justify the greater charge for the shorter haul on the ground of the competition of water carriers in connection with delivering rail lines from a different market. On this point the Commission held that:—

"Water competition to *justify* the greater charge for the shorter distance must be competition in transportation to the longer-distance point and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation."

The case was brought by complaint. There was no appearance at the hearing first assigned. The defendants subsequently, upon the order of the Commission that the burden was upon them took a little testimony by deposition, and the case was submitted with little or no argument on either side. The ruling and the order to cease and desist from charging more for the shorter than for the longer distance was in accordance with the spirit of the Commission's previous decisions and the only logical outcome of the case. The

defendants attempted to justify the greater charge for the shorter distance on the ground of substantially dissimilar circumstances and conditions, but they were not plainly dissimilar, under the construction of the section as laid down by the Commission and approved by the courts. The competition relied upon to constitute the dissimilarity in circumstances and conditions was not only from a different point of shipment but it was competition by carriers over through routes subject to the Act. What was said in that decision with reference to the competition of markets we now re-affirm. (686, 687). The competitors stood presumably with equal advantage under the law and the exceptional rate could only be sanctioned by an order granted upon investigation which should sustain the carrier's application for relief. The language of the fourth section present one very important consideration which should always be kept in view, namely: that which will not amount to a *justification* of the greater charge for the shorter haul under the prohibitory rule of the section may nevertheless *warrant* the Commission in granting a relieving order upon an application for relief under the proviso clause of the section. To stand upon one's right under the law is one thing, and to obtain relief by process of law is another. Ordinarily the Commission should not alter the standing of parties in proceedings before it. When upon complaint under the thirteenth section of charges alleged unlawful under the rule of the fourth section, the carrier avers substantial dissimilarity in circumstances and conditions as justifying the greater charge for the shorter distance, it is concluded by its pleading, and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar. But upon an application under the fourth section proviso the carrier is the petitioner, not the respondent; it is not limited by the terms of the rule, and may present to the consideration of the Commission every material reason for an order in its favor. And upon investigation of the matter the Commission is not confined to issues made by pleadings, but may, among other things, examine into the legality of rates on competing lines. The Commission may for cause



shown on such an application institute on its own motion a collateral proceeding for the purpose of correcting apparently unlawful rates on the competing line, and pending the proceeding grant temporary relief to the petitioning carrier.

But it must not be inferred by this that the Commission will entertain applications for relief based on frivolous grounds. The petition or application must make out in statement a *prima facie* case of hardship under the rule, and when the competition of another carrier is the cause of an application to charge less for the longer distance, it must appear therein that traffic considerable in amount will be lost to the petitioning carrier if through action of the Commission its situation in regard to such longer distance rate shall not be relieved.

We must dispose of these cases under the above construction of the law. Taking up the cases in the order in which they are treated in the findings, the Chattanooga-Atlanta All-Rail Route, Case No. 317, comes first. In this case, where all the competing lines are subject to the Act to regulate commerce and the jurisdiction of this Commission as to through shipments from Cincinnati, New York, Philadelphia, Boston and Baltimore, or from any Ohio River or Mississippi River point, or any Atlantic port north of Charleston, the defendants had no right to put in the higher rates for the shorter distance upon their own motion, but should have made application to the Commission for relief under the provisory clause of the fourth section, and are technically not now entitled to make defense to this complaint. But a considerable portion of the evidence was devoted to this route, and we ought to give the parties the benefit of our comment and conclusions as the facts now stand.

A schedule of rates from Cincinnati to Atlanta which affords a rate per ton per mile varying on the different classes from 1.18 to 4.51 cents cannot be considered too low; on the contrary, if such a rate sheet were challenged it would take strong evidence to overcome the presumption that such rates per ton per mile are unreasonably high. But the unreasonableness of Atlanta rates is not questioned here, these rates being the lower charges for the longer distance with which



rates complained of are compared. The distance from Cincinnati to Chattanooga is 336 miles, the first-class rate is 76 cents, and the rate per ton per mile is about  $4\frac{1}{2}$  cents. The distance from Cincinnati to Atlanta is 474 miles, the first-class rate is \$1.07, and the rate per ton per mile is also about  $4\frac{1}{2}$  cents. But the rate per ton per mile from Cincinnati to Marietta, a distance of only 451 miles, is over 5 cents and 6 mills. Marietta takes a first-class rate of \$1.27 from Cincinnati, being the Chattanooga 76-cent rate and the Western & Atlantic 51-cent local to Marietta. The rate per ton per mile, Chattanooga to Marietta, is over 8 cents and 7 mills for carrying about 117 miles, over one-third the mileage Cincinnati to Chattanooga, and nearly one-fourth of the total distance from Cincinnati to Marietta. The per ton per mile rate to Marietta is for a fourth part of the carriage nearly double the rate per ton per mile for the other three-fourths. There is 31 cents difference between the rates on first-class traffic from Cincinnati to Chattanooga and from Cincinnati to Atlanta. On through business from Cincinnati 31 cents would seem to afford a sufficient margin for carrying between Chattanooga and any point on the Western & Atlantic railroad.

Considering the relative amounts of through and local tonnage of the Western & Atlantic road, it is apparent that the reduction of rates to intermediate points to those in effect at Atlanta would result in but small loss of revenue from traffic shipped at present rates, and this would very likely be more than made up by consequent increase in traffic to those points.

Cartersville, Kingston and Marietta are reached by other lines than the Western & Atlantic, but these lines make no competition with the Western & Atlantic in rates on traffic to these points.

In view of these facts and others shown in the statement of findings, we hold that the defendants are not, upon the evidence, justified in making the greater charges complained of in this case. But this being the first case since the Louisville & Nashville decision in which the Commission has been called upon to specifically hold that relieving orders must be applied for in this class of cases, we think the carriers should

have an opportunity in this case of applying for relief under the proviso of the fourth section, and, if possible, of bringing forward voluntarily as applicants, instead of defendants, additional evidence that may be admissible under such a proceeding, as indicated in this opinion. The order will therefore be that the defendants in this case cease and desist, within 20 days after receiving a copy thereof, from charging or receiving any greater compensation in the aggregate for the transportation of a like kind of property from Cincinnati or other points called and known as Ohio River points for the shorter distance to Calhoun, Adairsville, Kingston, Cartersville, Acworth, or Marietta, than for the longer distance over the same line in the same direction to Atlanta, the shorter being included within the longer distance; or, that the defendants make and file with the Commission within the time above specified an application or applications as the case may require, as provided in the proviso of the fourth section of the Act to regulate commerce, for relief from the operation of that section in respect to the prohibition therein contained against charging or receiving any greater compensation in the aggregate for the transportation of like kind of property from Cincinnati and other Ohio River points to the shorter distance points above mentioned than for such transportation over the same line in the same direction for the longer distance to Atlanta, and show cause within 60 days after service of the order why such application for relief should be granted; and upon such application the evidence already taken in this case may be used. In case the application for relief shall be denied the order to cease and desist shall stand, and compliance therewith will be required within twenty days after service of the order denying the application.

The next case is the Augusta-Atlanta part water route, case No. 314. Atlanta is the longer distance point in this case as in the case just decided, and the competing lines for through transportation from New York, Philadelphia, Boston, Baltimore, Cincinnati, etc., are also the same as in that case. This route is through Charleston and there is a competing route by the Ocean Steamship Company and Central Railroad of Georgia through Savannah and Macon to

Atlanta; the distance being for all practical purposes about the same over either route. The transportation by the route through Savannah is composed of a water line and a line of railroad wholly in Georgia, but we shall not now undertake to discuss what effect an attempt of the water and state lines to make low individual rates and act independently of each other as to billing and shipment of carriage, might have upon traffic routed through Charleston. We are dealing with existing facts, and transportation over both routes is now through, and as to such transportation the carriers over both routes are subject to the Act. The East Tennessee and the Savannah, Florida & Western connecting at Jessup, Ga., also run from Savannah, Ga., through Macon, and the East Tennessee has its own line from Brunswick to Atlanta. High per ton per mile rates are produced by the locals of the Georgia Railroad and these rates, by being made part of through charges between interstate points, cause very considerable increase in rates per ton per mile for the whole route to intermediate points as compared with the rate per ton per mile produced by agreed through rates to the terminals. We are led to believe and hold upon the facts now before us that through charges over the route to the intermediate or shorter distance points are unlawful. For the reasons expressed in regard to the preceding case we shall direct the defendants to charge no more to the shorter distance points than to Atlanta, the longer distance station, or apply for relief and show cause thereon in the manner and within the time stated in the foregoing order in case No. 317. Before closing the discussion as to this case we desire to call attention to an admission by the defense in this case, namely, that Madison, one of the shorter distance points, would under the present method of defendants in fixing rates soon be likely to receive considerably reduced rates on account of the competition to that point through Macon situate on the Savannah route. A line extends from Macon up through Madison to Lula on the Richmond & Danville line. Madison and Social Circle both shorter distance points on the Georgia road are but 16 miles apart, and the present rates to Madison and Social Circle over this route are substantially

the same. Social Circle is also connected with the Richmond & Danville road by a line to Gainesville. The apparently favorable situation of these two places in respect to transportation facilities is worthy of note.

The case numbered 325, and called the Atlanta & West Point all-rail route from Cincinnati and other Ohio River points is next in order. We do not think this case comes within the rule of the fourth section. It is conceded by the complaint and the fact appears in evidence that water competition exists to Montgomery by the Alabama river. Opelika the other longer distance point is benefited by rates lower than it would receive were it not for the influence of competition at Montgomery; and West Point is also favored thereby though in less degree. But the inherent defect in the complaint is that the transportation is not over *the same line in the same direction* to both the shorter and longer distance points. The shorter is not included with the longer distance. Traffic for Montgomery and Opelika and even West Point routed by the Louisville & Nashville, one of the initial defendants, goes over a wholly different route, and as to the Cincinnati, New Orleans & Texas Pacific, another initial defendant, while the evidence is not clear upon the point, still the length of its line leads us to believe that in handling Cincinnati traffic for Montgomery and Opelika, it carries such traffic first to Birmingham and forwards to Montgomery and Opelika by connecting lines from that point. Freight from Ohio river points below Henderson may possibly go through Atlanta, but the principal point of shipment to which our attention was directed by the evidence is Cincinnati. The complaint in this case must be dismissed.

In case No. 315, the Macon-Georgetown-Columbus Part Water Route, the lines are the Ocean Steamship Company and the Central Railroad of Georgia, which transport the traffic from New York and other north Atlantic ports through the port of Savannah to Columbus, a longer distance point, and Everett, Butler, Geneva and Schatulga, shorter distance points on the same line, and also to Georgetown, a longer distance point, and Smithville, Dawson and Cuthbert, shorter distance points on the same line. These destination points

are on the southwestern division of the Central system, beginning at Macon and ending by one branch at Columbus and by another at Georgetown or Eufaula on the opposite bank of the Chattahoochee river. Columbus is also on that river. The defense claims that water competition exists at Columbus and Georgetown, the latter being about a mile east of the river, by a route which is water New York to Jacksonville, rail from Jacksonville to Chattahoochee River Junction, and steamboat up that river to Columbus and Georgetown, but admits that under present rates the Chattahoochee competition is not an element to be feared. It is also in evidence that the channel of the Chattahoochee would need to be improved before it could be extensively employed for vessels of considerable draught; but how much improvement would be necessary was not shown. The route controls the rates to the points mentioned except as they may be influenced by the river line.

There is much less disparity in rates to the shorter and longer distance points upon this route than those in effect to such points on any of the other routes named in these complaints. The highest first-class rate is \$1.31 and the lowest is \$1.14, making 17 cents difference between the first-class rates to Columbus or to any shorter distance station. The rates to each point are straight rates and not the addition of rates to and from a basing point. It is apparent to us that an intelligent effort has been made to keep the disproportion in long and short haul rates down to a low degree, and upon a plan of making rates direct to the point of destination, and it is possible if not probable that the application of proper regulation to other lines in this territory may enable the carriers upon this route to strictly comply with the general rule, or at least further reduce the difference between charges for the longer and shorter distances.

But we are not assured by the evidence that water competition by the Chattahoochee River is a seriously threatening and potential factor in rate making at this time, or that if in effect it would not be over a route wholly or partially subject to our jurisdiction, and as competition with other lines subject to the Act is also in this case we think the proper and

consistent course is found in the issuance of an alternative order like the one directed in cases 317 and 314, and such an order will be prepared.

The next case in order is the Atlanta-Macon All-Rail Route from Cincinnati. Here the Central of Georgia is again the terminal road. Macon is the longer distance point and Jonesboro, Hampton, Griffin, Barnesville and Forsyth are the shorter distance points. Macon and Atlanta, the two terminals of this, the Atlanta, division of the Central system, take substantially the same rates from Cincinnati. The rates to the intermediate stations are highest to the points about equidistant between the terminals and rates on the higher classes are based on the terminal which gives the most favorable combination rate; but the lower class rates are as a rule not arrived at by adding established locals to basing point charges. The rate per ton per mile Cincinnati to Griffin, one of the shorter distance points, is  $5\frac{1}{4}$  cents on the first-class rate of \$1.39, and the rate per ton per mile on the class D rate of 32 cents, the lowest class, is 1 cent and 2 mills. The Macon first-class rate of \$1.07 is about 3 cents and 6 mills per ton per mile and the class D rate of 29 cents is about 1 cent per ton per mile. We do not hesitate to say, as a general proposition that a rate per ton per mile of  $5\frac{1}{4}$  cents on any class of goods for a distance of over 500 miles, as is in effect to Griffin, is apparently unreasonable; neither is a rate per ton per mile of 3 cents and 6 mills for nearly 600 miles, such as Macon has, apparently too low. We think the latter rate is in itself evidence of being profitable, and that the amount of the former leads directly towards a belief in its being extortionate. But rates generally in southeastern territory range higher than in other sections of the country, the evidence adduced at the hearing on the question of reasonableness was meagre, and we are no more prepared to say in this than in the other cases that the defendants are unable to rebut the presumption of unreasonableness which is raised by an examination of the rates alone. On this route from Cincinnati to Atlanta the East Tennessee carries only between Chattanooga and Atlanta, but the East Tennessee runs on through Atlanta to and beyond Macon to the sea at

Brunswick. It also connects at Jessup with the Savannah, Florida & Western for Savannah. The distance from Cincinnati to Macon by the East Tennessee route is 576 miles as compared with the distance by the route in this case of 591 miles, but the short route Cincinnati to Macon is formed by the Cincinnati, New Orleans & Texas Pacific to Chattanooga; the Western & Atlantic to Atlanta, and East Tennessee to Macon; distance 562 miles. The mileage *from* the sea to Macon is 192 miles by the Central of Georgia from Savannah, and about 200 miles by the Savannah & Western and East Tennessee from Savannah. The distance by the East Tennessee from Brunswick to Macon is about 190 miles. So that the mileage between Macon and the sea at the two ports named is about the same by either of the roads. The rates to Macon from New York or Baltimore, water and rail, and from Cincinnati, all rail, have but little variation. Macon rates all rail, or water and rail, appear to meet on a nearly common basis. The Atlanta rates have been herein referred to and commented upon in other cases. Traffic to both the shorter and longer distance points in this case is only carried over lines which are subject to regulation at our hands. We therefore direct that the like order be issued in this case as was directed to be entered in the Chattanooga-Atlanta case, No. 317.

We next consider Case No. 326, the Atlanta & West Point Part Water Route through Charleston from New York and other northern ports to Newnan, Grantville, Hogansville, La Grange and West Point, shorter distance points, and Opelika, the longer distance point. All of these stations are located on the Atlanta & West Point road except Opelika, which is upon the Western of Alabama line. As shown by the findings applicable to this route, water and rail lines through Savannah and Brunswick can reach all the shorter distance points through Opelika, the longer distance point, except Newnan, over a shorter rail mileage than by this route from Charleston. The water lines to Savannah and Brunswick do not touch at Charleston, and the difference in distance by water from New York and other points to Charleston, Savannah or Brunswick is, in view of the low cost of water car-



riage, too inconsiderable to affect the merits of the case. The actual routing of the freight over these competing routes, which also reach Atlanta, and one of them (Newnan) by direct lines from the seaboard, is not shown, they not being parties to the case. We assume that it would be for the advantage of the Central road taking freight from steamer at Savannah for West Point, or even La Grange, to route it through Opelika, the longer distance point in this case, for its carrying distance would be longer than by delivering at Atlanta or Newnan. But traffic to the shorter and longer distance points does go over the route in this case—the Charleston route—and it is therefore within the rule of the fourth section and different from Case 325, which we have dismissed. All the competing lines are subject to the provisions of the Act to regulate commerce, and while under present rates of shorter lines to Opelika, West Point, etc., there may and doubtless do appear to the carriers composing the route under consideration reasons which they as carriers can but regard as forceful and controlling as to traffic and revenue, yet an application for relief by the carriers interested in present rates on traffic over the route, supported by such evidence and argument as the carriers' interest will lead them to present, and coupled with like investigation of the rates on the competing lines, may change the whole situation by bringing or retaining proper rates into effect and at the same time preserving all the just rights of each carrier and insuring equity and justice to the shippers and localities concerned. An alternative order as above outlined will likewise be entered in this case.

The Atlanta & West Point Fertilizer Route from Charleston, Case No. 324, is over the same railroads that form part of the last-mentioned route from New York to Newnan and other points. The fertilizer rates from Charleston are made in competition with rates from Savannah, and to the shorter distance points set forth in the complaint and findings the transportation from Savannah may be wholly within the State of Georgia. The rail lines from Savannah and Brunswick can also reach the shorter distance points through Opelika



with fertilizers as they do with class freights mentioned under the Atlanta & West Point Part Water Route. Fertilizers are low-grade freight, brought mostly, it is believed, in cheap bottoms to Atlantic ports. Rates on shipments of fertilizers from Savannah to Newnan, Grantsville, Hogansville, La Grange and West Point are exclusively subject to regulation by the complaining Georgia Commission, when the transportation is all in Georgia, and the Charleston dealer in fertilizers must meet the Savannah man by reducing prices if he cannot obtain from the Charleston route rates equally as low as those fixed by the Georgia Commission from Savannah. It seems to us that the remedy for the correction of rates on shorter hauls when competing rail shipments originate at seaports, one in and the other out of Georgia, is with the Commission of that State which is also the complainant herein. We might shut our eyes to this fact by holding that the competition is not from the same point of departure, but considering the power and office of the complainant, we believe such a ruling would be founded more on sentiment than fact, and not be warranted by the slight evidence in this case.

This case does not fall because of the competition of the Savannah and Charleston fertilizer markets for trade at the destination points named in the complaint. If free market competition were the only factor in the case, we should decide adversely to the defendant's claim of justification. But the rates from Savannah to all the shorter distance points are not only not subject to investigation by this Commission, but are subject to the authority vested by the State of Georgia in the Railroad Commission of that State, the complainant in this case, and such complainant has, as shown in the 33d finding, made a general ruling, the stated intention of which is to give the railroads in Georgia "the largest liberty in fostering the industries of the State," in order "that our own roads and seaports may be able to compete with roads and seaports without the State." We have here the anomalous case of a State Board authorizing a carrier subject to its supervision to enter unrestrainedly into competition as to rates from a seaport in Georgia with interstate carriers from a neighboring seaport without the State of Georgia, and yet complain-

ing against the interstate carriers that they violate the same long and short haul principle which it authorizes the State carriers to disregard. While the rule and explanation set forth in the 33d finding are kept in effect by the Georgia Railroad Commission, we do not think a complaint by it of rates from a southeastern seaport outside of Georgia to points in Georgia, reached also by rail lines from a seaport in that State, should be sustained.

Orders in the several cases will be made in accordance with the conclusions above stated. In this report and opinion all the Commissioners concur.

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NOTE.—Since this opinion was written, the Osborne case, cited upon page 31, has been reviewed in the Circuit Court of Appeals, and the judgment of the court below was reversed, but there is nothing in the opinion of Mr. Justice Brewer which disapproves the principles laid down by Judge Shiras in his charge to the jury, so far as quoted in this opinion; nor was anything said in the opinion of the appellate court in the Osborne case, necessary to the decision therein, in conflict with any views above expressed.

[No. 153.]

THE INDEPENDENT REFINERS' ASSOCIATION OF  
TITUSVILLE, PENNSYLVANIA, AND THE INDE-  
PENDENT REFINERS' ASSOCIATION OF OIL  
CITY, PENNSYLVANIA *v.* THE WESTERN NEW  
YORK & PENNSYLVANIA RAILROAD COMPANY;  
THE NEW YORK, LAKE ERIE & WESTERN  
RAILROAD COMPANY; THE DELAWARE &  
HUDSON CANAL COMPANY; THE FITCHBURG  
RAILROAD COMPANY; AND THE BOSTON &  
MAINE RAILROAD COMPANY.

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(No. 154.)

SAME *v.* THE WESTERN NEW YORK & PENNSYL-  
VANIA RAILROAD COMPANY; THE NEW YORK,  
LAKE ERIE & WESTERN RAILROAD COMPANY;  
AND THE LEHIGH VALLEY RAILROAD COM-  
PANY.

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(No. 163.)

SAME *v.* THE PENNSYLVANIA RAILROAD COM-  
PANY AND THE WESTERN NEW YORK & PENN-  
SYLVANIA RAILROAD COMPANY.

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Complaints filed in first two cases, December 4, 1888, and in third case  
January 30, 1889.—Answers filed December 26, 1888, to February 28,  
1889.—Heard at Titusville, Pennsylvania, May 15, 1889.—Briefs filed  
February 11, 1890, to September 23, 1891.—Decided November 14, 1892.

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1. It is the duty of the carrier to equip its road with the means of transpor-  
tation, and, in the absence of exceptional conditions, those means **must**  
be open impartially to all shippers of like traffic.

2. Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration, does not of itself entitle the owner to the exclusive use of such car, and, *if* the owner may in the contract of hire to the carrier stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired.
3. Where oil is transported by the carrier both in barrels and tank cars and the use of the tank cars is not open to shippers impartially but is practically limited to one class of shippers, the charge for the barrel package in barrel shipments in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipment and destination than to the tank shipper, is a discrimination against the former in favor of the latter, for which no legal justification has been shown in these cases.
4. The oil rates from Oil City and Titusville, Penn., to New York and New York harbor points and Boston and Boston points, exclusive of the charge for the barrel package in barrel shipments, are not shown to be either unreasonable in themselves, or relatively unreasonable as between those points.
5. An agreement for the pooling of traffic between a carrier by rail subject to the Act to regulate commerce and a carrier by pipe line does not fall within the description of contracts prohibited by section 5 of that Act.

*Franklin B. Gowen* and *M. J. Heywang*, for complainants.

*James D. Hancock*, for West. N. Y. & Penn. R. R. Co.

*Francis I. Gowen*, for Lehigh Valley R. R. Co.

*James A. Buchanan*, for the New York, Lake Erie & West. R. R. Co.

*James A. Logan*, for the Pennsylvania R. R. Co.

*F. H. Janvier*, for the Lehigh Valley R. R. Co.

#### REPORT AND OPINION OF THE COMMISSION.

**McDILL, Commissioner:**

These three cases were heard together and may be disposed of at the same time.

The Independent Refiners' Association of Titusville, Pennsylvania, and the Independent Refiners' Association of Oil City, Pennsylvania, the complainants in each case, are composed of separate and distinct companies engaged in the

manufacture and sale of refined petroleum and products of petroleum at works owned and operated by them in the oil regions of Pennsylvania at or near said cities of Titusville and Oil City.

The complaint in the first case is against the Western New York & Pennsylvania Railroad Company, the New York, Lake Erie & Western Railroad Company, the Delaware & Hudson Canal Company, the Fitchburg Railroad Company and the Boston & Maine Railroad Company, and it is alleged therein in substance that complainants as refiners and sellers of petroleum products ship from their works over the railroads of defendants "large quantities of petroleum to Boston, Mass., and intermediate points, and to Portland, Maine, and various points in the New England states, for sale in the markets of said places," and that the said five railroad companies, defendants, as common carriers engaged in interstate transportation, connect with each other, and by and under contracts between themselves and various traffic arrangements form and operate a continuous through route for the transportation of petroleum products, at through joint rates of freight divided among themselves, from the oil refineries of complainants situated as aforesaid, through or partly through the states of Pennsylvania, New York, Massachusetts, Maine and other New England states. The complaint then charges:

1. That defendants, "for the transportation of the manufactured products of petroleum in barrels in carload lots from Titusville and Oil City, to Boston and other points in the New England states on the line of the Fitchburg Railroad Company and Boston & Maine Railroad Company, called 'Boston points,' have established and published a schedule of joint through rates, under which they charge and receive '25 cents per hundred pounds, making the rate per barrel \$1.00, the weight of the package being included and charged for therein,' and that said rates are excessive, unjust and unreasonable, in violation of the Interstate Commerce Law."

2. The said rates "subject complainants and their traffic and the said localities to which their petroleum products are

carried to an undue and unreasonable prejudice and disadvantage," because (1) among other things, said rates are "practically prohibitory upon the traffic of complainants to said localities, and under average circumstances and conditions sufficient to nearly absorb the profit of complainants in their trade to said localities, and, under conditions as they exist during some periods of each year and under competition, will entirely absorb all profit in the business of complainants to said localities, and if continued will compel them to abandon their trade in that region of country;" and because (2) said rates "are disproportionate as compared with the rates for the like service in the like traffic under substantially similar circumstances and conditions from Titusville and Oil City to New York and New York points, which rate is now 66 cents per barrel." It is here averred that there is "competition in said traffic by ocean transportation from New York City to Boston points, and any unjust or unreasonable difference in rates to said points as compared with New York points is injurious to complainants' business and discriminates against their traffic and said Boston points."

3. That complainants are subjected to undue and unreasonable prejudice and disadvantage in their said business and undue and unreasonable preference and advantage is given, in relation "to the traffic and transportation of refined petroleum," over the lines of defendant, "to an organization known as the Standard Oil Trust," which it is alleged "is formed by a combination of numerous firms, associations and corporations engaged in the business of refining, buying and selling petroleum and its products for home trade and for export, and is also engaged in the business of storing crude petroleum in iron tanks, gathering the same from wells in the oil region of Pennsylvania and transporting it as a common carrier by means of pipe lines to the seaboard, at or near Philadelphia, Baltimore and New York, and to Buffalo, N. Y., and Cleveland, O., the charge to the seaboard through said pipe lines being the same as that made by the railroad companies known as the Trunk Lines." In connection with this

allegation, it is further charged on information and belief, "that the defendants, either directly or indirectly, act under contracts, agreements and arrangements made by the said Standard Oil Trust or some of the pipe line common carriers allied with and forming a part of said Standard Oil Trust, to wit, the National Transit Company, with other common carriers by rail engaged in interstate transportation of petroleum, for the pooling of freights of different competing common carriers and for dividing between them some part of the net proceeds of the earnings of said common carriers from petroleum interstate traffic or of said traffic in specie, by means of which such net earnings are divided, in violation of section 5 of the Act to regulate commerce;" and that the rates herein complained of are fixed by said combination under said pooling contracts or agreements, "and all connecting roads, including the initial railroad, the Western New York & Pennsylvania, which complainants must use and from which they must and do obtain their rates of through freight, are obliged to accept and charge the rate so fixed, and that said rate is made in the interest of said Standard Oil Trust and its allied companies, and with the intent, *inter alia*, of giving said Standard Oil Trust an advantage over complainants in the manufacture, transportation and sale of their products."

4. That the said rates of 25 cents per hundred pounds and \$1.00 per barrel were by a notice dated October 25, 1888, effective November 6, 1888, abrogated and withdrawn as to Manchester in the State of New Hampshire, Salem in the State of Massachusetts, Portland in the State of Maine, and about one hundred and fifty other points in said states reached by the Boston & Maine Railroad Company; that said notice was not communicated to complainants, and public notice was not given thereof, and the same was not posted for public inspection in the depots or stations of the initial road, the Western New York & Pennsylvania Railroad Company, until November 2, 1888; that the defendants, since said rates to said points were so abrogated, have not established and published any rates for said service to said points, although often requested by complainants so to do, and, while the defendants do not refuse to carry complainants' traffic for

said points, yet they will not state what the charges will be, and give complainants to understand that an arbitrary addition will be made to the said already unreasonable and excessive rates of 25 cents per hundred pounds and \$1.00 per barrel (established September 3, 1888) and that, because of these things, complainants are unable to ship their products to said points.

The second case is against the said Western New York & Pennsylvania and New York, Lake Erie & Western Railroad Companies, defendants in the first case, and also the Lehigh Valley Railroad Company; and the complaint relates to the business of the complainants in shipping oil from their refineries at Titusville and Oil City over the railroads of the three defendants to the Atlantic seaboard at or near Perth Amboy, New Jersey. It is alleged that Perth Amboy is "commercially a New York harbor point," and that "the greater portion of petroleum products shipped by complainants to New York harbor points is a very low-priced refined oil designed for export, and which has no other market." The rate complained of is that fixed by the defendants for the transportation of petroleum products from said refineries over their line through the States of Pennsylvania, New York and New Jersey. The said rate so fixed is stated to be 16½ cents per hundred pounds, or 66 cents per barrel, the weight of the package being included and charged for therein; and then follow the same averments as those in the first case as to the unreasonableness of said rate in itself, its discriminatory character as against the complainants, and the alleged pooling contracts or arrangements with the Standard Oil Trust or National Transit Company.

The defendants in the third case are the Western New York & Pennsylvania Railroad Company, a party defendant in the first two cases, and the Pennsylvania Railroad Company. The complaint in this case relates to the through rate on petroleum and its products of the lines formed by defendants' roads from Titusville and Oil City *via* Irvineton and Corry, Pennsylvania, respectively, to tide-water in New York harbor in the State of New Jersey. It is alleged:



1. That the members of the complainants' associations and other refiners of petroleum, and also various persons, firms, corporations and associations affiliated to the Standard Oil Trust, ship petroleum and its products over said lines of the defendants between said points, and that the shippers affiliated to complainants ship principally in wooden barrels or gondola, box, cattle or other cars, and those affiliated to the Standard Oil Trust ship principally in bulk in tank cars.

2. That a corporation known as the "National Transit Company," controlled by the Standard Oil Trust, owns a pipe line or lines from said oil regions to tide-water in New York harbor, through which oil is transported, and in consequence of the low cost of such transportation, the refining business of those affiliated to the Standard Oil Trust has increased and become very remunerative and prosperous at the Atlantic seaboard; and that within a few years, and partly due to the concentration of the refining business at the Atlantic seaboard by those affiliated to the Standard Oil Trust, there has grown into existence a large refining business in the oil regions of Pennsylvania, principally owned by the refiners forming complainants' associations.

3. That "in consequence of an advantage possessed by the refiners forming complainants' associations over the seaboard refiners, for the local and domestic markets of their vicinity and of the west, they have been enabled to maintain and increase their business," but they are subjected to great disadvantage, as compared with the refiners affiliated with the Standard Oil Trust, in respect to tide-water shipments, and in the business of refining petroleum there is about 40 per cent. of the product which cannot readily be sold in the United States and must be shipped to the Atlantic seaboard for transshipment to the foreign market, and without this export trade "the business of refining petroleum cannot be carried on with any profit."

4. That the National Transit Company is a common carrier of oil by pipe lines from the oil regions to New York harbor

and "for the purpose of enabling it to charge and maintain a high price for the transportation of oil, so as to secure a large profit and maintain an advantage for the Standard Oil Company and its affiliated industries, now controlled by the Standard Oil Trust, over all competitors," it has entered into a contract with the Pennsylvania Railroad Company for the pooling or division of the traffic on oil by railroad and by pipe line, one consideration of which was the maintenance of the same rates by pipe and rail line, and by which the former guarantees the latter 26 per cent. of the entire oil traffic between said points, and since the making of such contract they have maintained the same rate of charges by rail and pipe line on such traffic.

5. That for some years the rate by defendants' lines from the oil regions to New York harbor had been 52 cents per barrel irrespective of whether the oil was shipped in bulk in tank cars or in wooden barrel packages, and under this rate, notwithstanding the disadvantage in rates (estimated at about 48 cents per barrel) to which they were subjected in their export trade in competition with their rivals affiliated to the Standard Oil Trust, they were enabled *by their advantages in the local markets to maintain and even increase their business*; but that about September 13, 1888, the defendants, in common with all other railroad companies having lines leading from the oil regions of Pennsylvania to New York harbor, advanced their charges on oil shipped in wooden barrels over such lines from 52 cents to 66 cents per barrel, an advance of 14 cents per barrel, while the rate on oil shipped in bulk in tank cars remained as before—52 cents per barrel; and that the effect of this advance is to prevent the refiners affiliated with complainants from competing with those affiliated with the Standard Oil Trust for the export trade, and "must result in the still further aggrandizement of the monopoly of the petroleum industry of the country already held by the Standard Oil Trust." It is charged that the rate of 66 cents per barrel is unreasonable and excessive, that it is discriminatory, that it gives the Standard Oil Trust and affiliated firms and shippers of oil in bulk in tank cars an

undue and unjust preference and advantage over complainants' associations and shippers of oil in barrel packages, and subjects the latter to an undue and unjust prejudice and disadvantage.

The prayer in each of the complaints is, in substance, that the defendant railroads be ordered to "cease and desist from" the alleged unlawful acts complained of, to adopt reasonable and just rates for the service of transportation of petroleum and its products over their respective lines between points named, to make reparation to complainants for their alleged injuries, and for general relief.

The railroad companies made parties defendant in the three complaints have filed answers. All the allegations of acts or conduct on the part of the defendants in contravention of any of the provisions of the Interstate Commerce Law are put in issue, and the reasonableness of the rates complained of and justice of the course pursued by the defendants in respect to the traffic which is the subject matter of the controversy, are affirmed. To avoid unnecessary repetition, the specific denials, admissions, and explanatory and argumentative statements of the several answers will not be set forth here, but, so far as deemed material, will be referred to and considered further on in the discussion of the questions of fact and law involved in these cases.

It is suggested in the answers of the Western New York & Pennsylvania Railroad Company, and also set forth in a memorandum filed by the complainants, that there are other lines of railroad besides those made parties defendant to these complaints which carry on joint through rates petroleum products from the western Pennsylvania oil regions eastward for the inland and export trade, and that these routes, including those complained against, form two classes, one carrying for the New England trade or Boston points and the other for New York points; each of said classes having the same rates for itself, and that the railroads forming these different routes are interested in the question of the reasonableness of the through rates complained of in these cases. The complainants state that they desire the general rates to be inves-

tigated rather than the special features of any particular rate, and have filed the following schedule of such lines or routes:

1. Western New York & Penna. R. R., West Shore R. R., Boston & Maine R. R., Fitchburg R. R., and several other smaller roads in the New England States to Boston points.

2. Western New York & Penna. R. R., New York Central & Hudson River R. R., and Boston & Albany R. R., to Boston.

3. Western New York & Penna. R. R., Delaware, Lackawanna & Western R. R., Delaware & Hudson Canal Company's R. R., Fitchburg R. R., to Boston.

4. Western-New York & Penna. R. R., New York Central & Hudson River R. R., to New York City.

5. Western New York & Penna. R. R., West Shore R. R., to New York.

6. Dunkirk, Allegheny Valley & Pittsburgh R. R., Lake Shore & Michigan Southern R. R., New York Central & Hudson River R. R., Boston & Albany R. R., to Boston.

7. Dunkirk, Allegheny Valley & Pittsburgh R. R., New York, Lake Erie & Western R. R., Delaware & Hudson Canal Company, Boston & Albany R. R., to Boston.

8. Dunkirk, Allegheny Valley & Pittsburgh R. R., Lake Shore & Michigan Southern R. R., New York Central & Hudson River R. R., to New York, etc.

9. Dunkirk, Allegheny Valley & Pittsburgh R. R. New York, Lake Erie & Western R. R., Lehigh Valley R. R., to Perth Amboy, etc.

10. Western New York & Penna. R. R., Philadelphia & Erie R. R., Delaware, Lackawanna & Western R. R., Delaware & Hudson Canal Company's R. R., Fitchburg R. R., to Boston.

11. Western New York & Penna. R. R., Philadelphia & Erie R. R., Pennsylvania R. R., to Communipaw, N. J., etc., New York delivery.

12. Dunkirk, Allegheny Valley & Pittsburgh R. R., Lake Shore & Michigan Southern R. R., West Shore R. R., Fitchburg R. R., to Boston.

13. Dunkirk, Allegheny Valley & Pittsburgh R. R., Lake Shore & Michigan Southern R. R., West Shore R. R., Boston & Albany R. R., to Boston.

14. Dunkirk, Allegheny Valley & Pittsburgh R. R., New York, Lake Erie & Western R. R., New York & New England R. R., to Boston.

15. Western New York & Penna. R. R., New York, Lake Erie & Western R. R., to New York.

16. And same connecting at Newburg, N. Y., with New York & New England R. R., to Boston.

Also the two routes mentioned in complaints filed.

Other points and routes incidentally interested.

A. Western New York & Penna. R. R., Philadelphia & Erie R. R., Pennsylvania R. R., "Green Line," to Philadelphia.

B. Western New York & Penna. R. R., Philadelphia & Erie R. R., Northern Central R. R., "Green Line," to Baltimore, Md.

On the filing of the memorandum of complainants and the above schedule, this Commission ordered that the various carriers composing said routes be furnished with copies of the complaints, answers and orders in these cases and allowed to intervene as parties by filing notices to that effect.

The following are the carriers named in said schedule other than those originally complained against :

1. West Shore Railroad Company.
2. New York Central & Hudson River Railroad Company.
3. Boston & Albany Railroad Company.
4. Delaware, Lackawanna & Western Railroad Company.
5. Dunkirk, Allegheny Valley & Pittsburgh Railroad Company.
6. Lake Shore & Michigan Southern Railroad Company.
7. Philadelphia & Erie Railroad Company.
8. New York & New England Railroad Company.
9. Northern Central Railroad Company.

The provisions of the order of the Commission were subse

quently extended so as to embrace the Philadelphia & Reading Railroad Company and the Fall Brook Coal Company, and they, together with the above named carriers, were served with copies of the pleadings and orders in the several cases and allowed to intervene pursuant to the order of the Commission. No answers to the charges in the complaints have been filed by any of these carriers, but the Lake Shore & Michigan Southern Railroad Company enters an appearance and asks notice of hearings and other proceedings, and the New York Central & Hudson River Railroad Company "gives notice of a desire to intervene as a party defendant in said causes and to appear and be heard therein."

The Pennsylvania Railroad Company in the case against it and the Western New York & Pennsylvania Railroad Company, on June 20, 1891, filed an application to take additional testimony. The complainants in their answer resisting this application, make certain admissions as to the facts offered to be proven by the Pennsylvania Company, and that company in its reply to the answer of complainants claims that said answer "at least impliedly, admits the fact to establish which this respondent in its application asked leave to offer testimony. The application to reopen the case for the submission of additional testimony is made a year and eight months after the last testimony in the case had been taken, and over a year and four months after the case had been submitted on oral argument. There is no claim that the evidence offered has been newly discovered and no excuse whatever is presented for not producing it at the hearings where the Pennsylvania Company was represented by counsel and a large number of the officials of the Pennsylvania Company who had knowledge of the alleged facts, if they existed, were examined as witnesses. In view of the admissions of the complainants in their answers to the application, which the applicant in its reply to said answers treats as substantially conceding the facts offered to be proven (and which admissions and reply will be duly considered so far as relevant and material in our disposition of the case), and of the further fact that no additional delay should be had in these proceed-

ings except in a clear case of necessity, the application must be and is denied.

#### FACTS AND CONCLUSIONS.

The *leading* questions raised by the pleadings in these cases relate (1) to the lawfulness of the charge for the barrel package *under the circumstances and conditions disclosed by the evidence*; (2) to the reasonableness in themselves of the rates in question; and (3) to the *relative* reasonableness of the rates to Boston and New England points as compared with those to New York and New York harbor points.

1. The lawfulness of the charge for the barrel package was for the first time distinctly presented for decision and passed upon by this Commission in the case of *Rice v. Western New York & P. R. Co.*, 4 I. C. C. Rep. 131, 3 Inters. Com. Rep. 162. That case was originally decided adversely to the complainants therein, 2 I. C. C. Rep. 389, 2 Inters. Com. Rep. 298; but the complaints in the present cases having been filed about that time and it appearing that a much fuller investigation of the general subject of oil transportation would be made, this Commission on motion of said complainants, April 15, 1889, issued an order opening said case for further hearing and providing that the testimony taken in the present cases should apply to said case, so far as it might be relevant. It is stated in the final decision in the case, that "as at first presented it rested mainly upon a comparison of the existing rate with a former rate of 25 cents a barrel from Titusville to Buffalo and with the proportion received by the respondent of a joint through rate from Titusville to the seaboard *via* Buffalo, but that the additional facts elicited at the hearings in the cases now under consideration introduced other and more important elements tending to show unjust discrimination between shippers of oil in tanks and in barrels, and in other particulars," and it was held in substance that the charge for the barrel package when no charge is made for the package when tanks are used, both modes of transportation being employed by the carriers, was an unjust discrimination against the shipper in barrels in favor of the



shipper in tanks, and that the correction of this discrimination required "that in the transportation of oil in carloads, barrels as well as tanks, shall be regarded as only a means of carriage of the commodity, and as in case of transportation in tanks, the rate shall be charged only for the weight or quantity of the oil carried, exclusive of the weight of the barrel, and be the same for like weight or quantity carried in tanks."

The Western New York & Pennsylvania Railroad (which is a party defendant in each of the present cases, being the initial carrier in all the lines complained against) was the sole party defendant in the case of Rice, Robinson & Witherop, but the charge in that case was not only against the rate by that road from Titusville to Buffalo, but also involved a consideration of the proportion received by it of the through rate from Titusville *via* Buffalo to the seaboard at Perth Amboy, and the facts pertinent to the question of the lawfulness of the charge for the barrel package applicable to that case were substantially the same as those bearing upon that question in the present cases.

The defendants transport oil in bulk in tank cars and in wooden barrels in box and rack cars. Prior to September 3, 1888, the rates over the lines of the defendants on shipments of oil both in tanks and barrels had been the same for a like quantity of that commodity exclusive of any charge for the weight of the barrel in barrel shipments, but about that time, the rates on barrel shipments were increased 14 cents to New York points and more to Boston points, this additional charge being for the weight of the barrel, and as the rates on tank shipments, not including the weight of the tank or package, were not advanced but allowed to remain as they were, the result was a discrimination in favor of the tank as against the barrel shipper. The question is whether that discrimination is in the language of the statute an "unjust discrimination."

The defendants set up several matters in excuse or justification of their action in this matter. They claimed in the first place that in originally making the additional charge for the barrel package, they did so in compliance with what they



conceived to be the ruling of this Commission in reference thereto in the case of *Rice v. Louisville & N. R. Co.*, 1 I. C. C. Rep. 503, 1 Inters. Com. Rep. 722. This point is fully discussed in the case of *Rice, Robinson & Witherop* and it is made clear that not only no warrant for the action of the carriers proceeded against *in the present cases* is found in any ruling of this Commission, but also that said action is in disregard of the "principle plainly and emphatically laid down by the Commission," in said case of *Rice* and also in the subsequent case of *Scofield v. Lake Shore & M. S. R. Co.*, 2 I. C. C. Rep. 90, 2 Inters. Com. Rep. 67. If it be conceded that in the language used by the Commission in said cases there was some color *for the original institution* of the discrimination arising from the charge from the weight of the barrel, yet no authority for the *continuance* of that discrimination can be predicated of such language since the issuance by the Commission and communication to the carriers of the memorandum entitled, "*Re Relative Tank and Barrel Rates on Oil*," 2 I. C. C. Rep. 365, 2 Inters. Com. Rep. 245, in which it was declared that the action of the carriers in this particular was unwarranted by the decisions in said cases.

Having instituted the discrimination in order, as they allege, to bring their practice into conformity with what they understood to be the rulings of this Commission, the carriers now seek to justify and maintain this departure from their former custom of long standing on other grounds.

It is claimed that in case of special facilities at loading and unloading points, the tank cars are handled more rapidly than cars carrying oil in barrels. This may be true, but the testimony is that the railroads do not provide these facilities, and there are none at the seaboard of which the complainants can avail themselves. When special facilities for loading and unloading tank cars are not available, greater delay occurs than in loading and unloading barrel cars.

It is further set up by the carriers in justification of the charge by the barrel package, that the barrel belongs to the shipper and is an article of merchandise, and when shipped from the oil region to the seaboard sells for an advance over cost in the oil region equal to the freight paid on the barrel.

They estimate the cost of the barrel in the oil region without manufacturer's profit at from \$1.11 to \$1.16, and the selling price in New York at from \$1.30 to \$1.32½ per barrel, which would be a profit somewhat greater than the amount of the freight charge of 14 cents. This estimate, however, only includes the cost of the barrel as received from the barrel maker, and ignores the further cost incurred by the refiner in preparing the barrel as a receptacle of oil. After the barrel is received from the manufacturer, the refiner has to paint it on the outside, coat it with glue within, put in a bung-hole and provide a bung, plug worm holes, re Cooper the barrel and see that it is perfectly tight. The proof shows that the cost of the labor and material for this preparation of the barrel is from 16 cents to 17 cents per barrel, and that this, added to the original cost as received from the manufacturer, makes the total cost per barrel to the refiner from \$1.30 to \$1.32½, the selling price in New York.

The total cost of the barrel and its preparation to the refiner at Titusville and Oil City is shown by the following itemized statements, the first being made at Oil City and the second at Titusville:

## I.

New barrels with heavy iron for export.....	\$1.16
Labor in coopering, gluing, painting, and loading on cars, per barrel.	.055
Glue, per barrel.....	.065
Paint, Rosin, Naptha, &c., per barrel.....	.029
Bungs, Stencils, Brushes, Repairs to machinery and buildings, Steam &c .....	.025
Total per barrel.....	\$1.325

## II.

New barrels, heavy hoops.....	Average price.....	\$1.18
Total labor.....	Per barrel.....	.06
Glue.....	" "	.06
Paint, Rosin, Naphtha.....	" "	.02
Bungs, Rivets, Iron, Plugs.....	" "	.005
Stencils, Brands, Brushes, Brooms, &c.....	" "	.005
Tools, Utensils, Fillers, Hose and Machinery.....	" "	.02
Total per barrel.....		\$1.80

If sold in New York, or paid for as part of the consignment, the barrel does not bring more than its cost to the

shipper, and when returned empty it is at the shipper's expense. Moreover, as is said in the Rice, Robinson & Witherop case: "In the carriage of oil the barrel is not shipped as merchandise, but as a package or means of transportation of the oil." 4 I. C. C. Rep. 152, 3 Inters. Com. Rep. 162.

It is also maintained that the transportation in tanks yields the carrier a larger revenue above the cost of service than that in barrels. In support of this contention, tables showing dead and paying weight hauled in tank cars carrying oil in bulk, and in box cars carrying oil in barrels, respectively, were introduced in evidence on the part of the defendants, and it appears therefrom that the amount of paying freight hauled in the average tank car is greater than that in the average car loaded with barrels, and that in consequence the revenue to the carrier is somewhat greater in the former case than in the latter, even when the barrel package is charged for, and is, of course, still greater where no charge is made for the barrel package. It is estimated by one of the witnesses that at the present rate of 16½ cents per 100 pounds to New York points, the carrier would receive on an average train load, the barrel package being charged for, \$35.76 more for the transportation of oil in tanks than in barrels, and excluding the charge for the barrel package, \$237.20 more. Without affirming the strict accuracy of these tables and estimates, it may be conceded the evidence shows the amount of paying freight to be materially greater in tank shipments than in barrel shipments. In the case of Scofield v. Lake Shore & M. S. R. Co., 2 I. C. C. Rep. 90, 2 Inters. Com. Rep. 67, it was found that "the tank car, taking the gross weight of the car and oil, pays slightly more to the carrier per ton than the stock car with the full load." 2 I. C. C. Rep. 103, 2 Inters. Com. Rep. 71.

This plea that the transportation in tanks is the more profitable to the carrier in yielding a larger revenue above the expense of service was presented in the case of Rice, Robinson & Witherop, and was in effect held to be no justification of the discrimination between tank and barrel shippers *under the circumstances and conditions regulating the use of the two modes of transportation*. These circumstances and conditions

do not present a case of two modes of transportation open indiscriminately to shippers in general, the one at a higher rate than the other, and as to which the shipper may take his choice and pay accordingly, but a case where the *cheaper-rated* and, as is claimed by the defendants, the *better*, mode of transportation is available practically to only a particular class of shippers. The railroads do not to any material extent own tank cars or furnish facilities for loading and unloading them, but they are owned almost entirely by the shippers and *limited in their use to such owners*. It is claimed by the railroads that it is impracticable for them to own a sufficient supply of tank cars and construct the terminal facilities for the receipt and delivery of oil necessary to their profitable employment and that the cars should be owned and these facilities be constructed by the shipper. In reference to this state of facts the following language is used in the case of Rice, Robinson & Witherop: "It is not the business of the shipper to furnish the vehicle of transportation. That is the duty of the carrier. Under its franchise the carrier must do more than construct his roadway. He must equip it with the means of transportation, and these means, of whatever style or pattern, must be open *impartially to all shippers of like traffic*. If the carrier hire or arrange in any manner for the use of vehicles he does not own, he has one of two things to do: he must either furnish like vehicles to all competitors in the traffic, or must be careful to make no unjust discrimination and give no undue preference in his rates. For all transportation purposes, so far as the public is concerned, a carrier makes every vehicle his own that he uses upon his road, no matter how acquired. His responsibility to the public is the same in respect to rates and other transportation duties whether he owns or hires his vehicle. When, therefore, he accepts tank cars owned by shippers who can afford to build and furnish them, and has none of his own to furnish to other shippers, but can supply only box cars in which barrels must be used for oil, he is bound to see that he gives no preference in rates to the tank shipper, and that he subjects the barrel shipper to no disadvantage. It is at this point that the duty of the carrier to the public is rigorous,

and where no plea of inability to furnish tanks, or other excuse, is admissible."

It is contended by counsel for the Western New York & Pennsylvania Railroad Company, that the Commission erred in holding it to be the duty of the carrier to furnish the vehicle of transportation. On this point it is said in the case of *Scofield*, that while the statute does not clothe the Commission with power to determine what kind or number of cars the carrier shall place upon its line for transportation purposes, yet "the duty of the . . . carrier is none the less obligatory at common law and by its charter to furnish an adequate and proper car equipment for all the business . . . it undertakes and advertises in its tariffs it will do." 2 I. C. C. Rep. 117, 2 Inters. Com. Rep. 76. In *Rice v. Louisville & N. R. Co.*, 1 I. C. C. Rep. 547, 1 Inters. Com. Rep. 722, the Commission says: "It is properly the business of railroad companies to supply to their customers suitable vehicles of transportation and then to offer their use to everybody impartially"—citing *Ogdensburgh & L. C. R. Co. v. Pratt*, 89 U. S. 22 Wall. 123, 133, 22 L. ed. 827, 830. There is no obligation upon any one to enter into the business of common carriage, but, having undertaken and advertised to conduct such business, it seems clear that the duty of furnishing vehicles of transportation is incurred. *Chicago & A. R. Co. v. Dawson*, 79 Mo. 296, 18 Am. & Eng. R. Cas. 521; *Ayres v. Chicago & N. W. R. Co.*, 71 Wis. 372, 380, 5 Am. St. Rep. 226; *Smith v. New Haven & N. R. Co.*, 12 Allen, 531; *St. Louis & S. E. R. Co. v. Dorman*, 72 Ill. 506.

If it be not the duty of the common carrier to furnish the vehicle of transportation, then his only legal obligation is to transport over his road-bed such vehicles when furnished by others. He could not be compelled to do more, and if he chose to pursue such a course, the privilege of transportation of both person and property over his line might be denied to the great mass of the public and limited to the few who were able and found it to their advantage to invest in cars for their own use. It is manifest that in such transportation

there would be but a small, if any element of *common carriage*; it would be a prostitution of the franchise received from the state and call for its forfeiture.

In fact and in law, however, the carrier *furnishes the tank as well as the barrel car*. The shipper in tank cars (who is also the owner) is only the *source of supply*. He does not, strictly speaking, furnish the tank car, but lets it to the carrier, charging and receiving the customary mileage both ways, and the carrier, the hirer, furnishes it. If there were nothing more in the transaction than this, it could not be successfully contended that it is not the duty of the carrier to offer the use of the tank car to shippers indiscriminately. But it may be said that the owner of the tank car has acquired these cars for the purpose of having his own products transported therein, and that in the contract of hire to the carrier he *may stipulate for their exclusive use*. Conceding that this may be done, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier.

In the Rice case, it is said: "The carrier has no right to hire rolling stock and then allow it to be used exclusively by one class of persons on such terms as will drive out of business those who are compelled to use its own rolling stock in a competitive traffic. This, however, is precisely what takes place in this traffic, if the rates for the transportation in barrels are considerably in excess of those which are charged for the transportation in tanks. The tank cars, . . . whether the use is paid for or not, ought properly to be held for the use of all; but if this is found impracticable, it is very certain and very obvious that proprietorship of the car *for the use of which the carrier pays* . . . can fairly entitle the owner to no special consideration in the making of rates." *Rice v. Louisville & N. R. Co.*, 1 I. C. C. Rep. 548, 1 Inters. Com. Rep. 722. If the carrier should rent from a car-furnishing company, who are not shippers, cars better adapted to a particular traffic than its own, and should limit their use to one class of its customers and at a cheaper rate than is charged to its other customers for the use of its own cars, no one could question the injustice of such discrimination. In prin-

ciple the case is the same, whether the shipper or some outside party is the source of supply.

The tank of the tank car performs the function of a package in tank shipments, as the barrel does in barrel shipments. The carrier, in renting and paying mileage for the tank car, furnishes the tank shipper a package and free transportation thereof; the barrel shipper furnishes his own package and is charged for its transportation. At 14 cents, a barrel on the minimum carload of 60 barrels, the discrimination against the barrel shipper amounts to \$8.40, equivalent to freight at tank rates on over 16 barrels of oil. The average distance from Oil City and Titusville to New York harbor points by the railway lines between those points is over 500 miles. The mileage paid per car for round trip at  $\frac{3}{4}$  cents per mile amounts to over \$7.50. The tank shipper, therefore, receives about \$7.50 per round trip for the use of his car including a package for his oil, while the barrel shipper pays \$8.40 per car for the transportation of his packages one way.

The cost of the tank car is from \$600.00 to \$634.00; it requires special facilities for loading and unloading, has to be cleaned out after use to render it fit for carriage of different qualities of oils, and carries no return loads from the east. Barreled oil is transported in box and rack cars; the box cars generally used for that purpose are old and inferior, unfit for the transportation of merchandise in general, and new box cars are seldom so used, as the leakage and odor of the oil are calculated to render them unsuitable for the carriage of freight liable to be damaged thereby. The box car costs about \$450.00. It is estimated and the evidence tends to show that from five to ten per cent. of the cars used in carrying oil in barrels return loaded.

A statement introduced in evidence, dated October 1, 1889, shows that the total tank car equipment of the United States so far as then known was 7,864 cars, owned and operated as follows:

Owned by railroads .....	1,342
Owned by companies and individuals not connected with the Standard Oil Company (approximately).....	1,844
Leased by Standard Oil Co. to outside parties.....	300
Total operated by parties not connected with Standard Oil Co. (approximately) .....	3,486



Owned by Standard Oil Company.....	4,497
Less leased to others.....	300
Total operated by Standard Oil Company.....	4,197
Owned in part by Standard Oil Company.....	181
	<hr/>
	4,378
	<hr/>
Total tank car equipment.....	7,864

From this it will be seen that the Standard Oil Company owns and operates over half of the total tank car equipment of the United States. The complainants manufacture refined petroleum and its products at or near Oil City and Titusville and sell the same in the domestic markets and at the Atlantic seaboard for export. They do this business in competition with the Standard Oil Company and others. The capacity of the refineries of complainants is about two millions barrels per annum, and their actual shipments for the year 1888, were about a million and a half barrels of petroleum products. The shipments were entirely by rail and for the most part in barrels.

The counsel for the Western New York & Pennsylvania R. R. Co. admits that the method of making rates by weight including the barrel package "might lead to injurious effects to those who shipped their oil exclusively, or the greater portion of their oil, in barrels," but contends that it would be difficult to decide that this method of making rates was a discrimination in favor of the Standard Oil Co., in view of the testimony introduced which shows that the shipments for that company over the Green Line (which is a department of the Pennsylvania R. R. having charge of all the east-bound transportation of oil in carloads over that road) for the six months ending December 31, 1888, were, in barrels, 354,793, and in bulk, 308,899 barrels, and over the New York, Lake Erie & Western R. R. in barrels, 117,993, and in bulk, 92,730 barrels. These figures show that for the period named, the Standard Oil Co. and its "affiliated industries" shipped more oil by rail in barrels than in tanks to the east over said lines. During about two months and a half of that period, to wit, from July 1, to September 13, 1888, the charge on the barrel package was not in force, and in the itemized statement



introduced in evidence showing shipments by months, the shipments for the last of the six months (December) were less in barrels than in bulk, being by the Green Line in barrels, 35,098, and in bulk, 43,645, and by the New York, Lake Erie & Western R. R., in barrels, 19,126, and in bulk, 25,538. The aggregate shipments, however, for the portion of the six months during which the charge for the barrel package was in force, were greater in barrels, than in bulk. The witness by whom this proof was made was in the employ of the Standard Oil Co. as assistant manager of the Union Tank Line, and he does not testify positively, but that "he thinks" the same proportion as to barrel and tank shipments prevailed for a like period before and since the period stated. The evidence would have been more satisfactory if some period covered entirely by the barrel package charge had been selected and the witness had given the figures, presumably accessible to him, showing the shipments during the like periods before and since the institution of the charge for the barrel package. The witness could not state the amount of the Standard Oil Company's shipments by pipe lines or the proportion of such shipments to its shipments by rail. The rate by the pipe lines to the public is the same as the tank rate by rail. The shipments shown by the above figures, moreover, were from Rochester, Buffalo, Pittsburgh, Cleveland, and other points besides Oil City and Titusville, and in the shipments from the latter points the bulk shipments largely exceeded the barrel shipments, being by the Green Line from Oil City, 156,537 in bulk and 91,089 in barrels, and from Titusville 63,101 in bulk and none in barrels, and by the New York, Lake Erie & Western R. R., from Oil City, 7,510 in bulk and none in barrels, and from Titusville 931 in bulk and none in barrels. The ultimate question, however, in these cases relates to an unjust discrimination not as between particular parties, but as between two classes of shippers, the barrel shipper and the tank shipper. The fact that the Standard Oil Company owns and operates more than half of the total tank car equipment of the United States, would seem to justify the inference that its gain is largely greater than its loss by the discrimination in favor of tank shipments.

In the statement above of the total tank car equipment of the United States, 1,342 is the number given as owned by railroad companies. Of these 1,130 belong to the Pennsylvania R. R. Co., leaving 212 as the number owned by all other railroads in this country. Practically, then, with the exception of the Pennsylvania R. R. Co., the defendants carry oil in tank cars for such shippers only as own the cars and supply them to the roads. The application of that company to take additional testimony heretofore referred to was, so far as deemed material and as stated therein, for the purpose of showing that it is the owner of 1,100 oil tank cars, of which about 450 cars or so many of them as from time to time are necessary to meet the demands therefor, are furnished indiscriminately to all parties desiring shipments of refined oil to points upon its own or affiliated lines of railroads, including the seaboard points on the New York harbor, at Philadelphia and Baltimore, and "that with few exceptions occurring occasionally during the period of heaviest shipments . . . these cars have been equal to, and often in excess of, the demands upon them by shippers." The complainants answering admit that said railroad company "is the owner of about 1,100 tank cars of which about 450 are devoted to the carrying of refined oil and offered indiscriminately to the shippers of that product;" but allege that "if the demand for these cars is no greater than is stated, it is because the Pennsylvania R. R. Co. will not permit them to go to any other place on the seaboard at New York harbor, than Communipaw, and only there at the docks of the National Storage Co., which is allied to the Standard Oil Trust," and that it "refuses to permit the cars to go to Perth Amboy, the export station to which the Independent Refiners" (complainants) "ship most largely." In reply, the railroad company construes the answer of complainants as "at least impliedly admitting the said facts to establish which the application was made," and itself admits that "it transports oil going over its lines to the New York seaboard to Communipaw and not to Perth Amboy," assigning as reasons that oil is a traffic dangerous to other merchandise and that has to be handled at a separate point of delivery, and that

Communipaw is only a mile and a half from its regular deliveries in Jersey City and the most convenient point for oil delivery by its road, while Perth Amboy is distant about nineteen miles and one of the terminal stations of an active competitor, the Lehigh Valley R. R. Co. It also alleges that the individual shipper can obtain at Communipaw equal facilities at equal rates with those obtainable at Perth Amboy. The allegation of complainants that the road will only deliver at the docks of the National Storage Co. at Communipaw and that that company is allied to the Standard Trust is not denied. The evidence shows that the National Storage Company advertises itself as the agent of the Green Line and Pennsylvania R. R. Co., and has charge of that company's terminals at Communipaw and that the tank cars of that line and company are allowed to run only to the National Storage Company's docks. This Storage Company has facilities at Communipaw for unloading tank cars into bulk steamers or vessels, but these facilities are not open to complainants, and a witness (Confer) testified that in order to get oil shipped in bulk from Communipaw, the Independent refiner has to sell it to the Standard Oil Company. From this state of facts it appears that while about 450 tank cars of the Pennsylvania R. R. Co. may be "open to shippers indiscriminately," it is only upon the conditions of shipment to Communipaw for delivery there to the National Storage Company, and that the facilities owned by this Storage Company for bulk shipment are not available to shippers in general. The fact testified to, that the facilities of the National Storage Company at Communipaw for bulk shipment are not open to outside shippers, and that in order to have oil shipped in bulk from that point it has to be sold to the Standard Oil Company, tends to sustain the allegation of complainants that the Storage Company is an ally of the Standard Oil Trust. The Pennsylvania R. R. has a connection with the Lehigh Valley road seven or eight miles from Perth Amboy, and there is no physical obstruction to prevent the cars of the former road running through to Perth Amboy. The agent in charge of the Green Line at the time of the hearing (Motheral) stated that the tank cars of the Pennsyl-

vania road were not permitted to run to Perth Amboy because of a contract of the road with the National Storage Company to deliver to their yard. The Green Line, as before stated, is the oil transportation department of the Pennsylvania R. R. Co., and this agent testified that the Green Line could not meet the demand of the business of the Standard Oil Company for tank cars on its line, and had to use sometimes as many as 600 cars of the Union Tank Line, a department of the Standard Oil Company, in the Standard Oil business.

After full investigation and mature consideration, our conclusion in reference to the charge for the barrel package is in line with that in the case of Rice, Robinson & Witherop and with the principles pertinent to the question laid down in that case and in the cases of Rice and Schofield, and we hold, that where both modes of transportation are employed by the carrier, and the use of one, the tank car, is not open to shippers impartially but is practically limited to one class of shippers, the charge for the barrel package in barrel shipments, in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipment and destination than to the tank shipper, is an unjust discrimination, subjecting the barrel shipper to an unreasonable disadvantage and giving the tank shipper an undue advantage, and that no circumstances and conditions have been disclosed by the evidence in these cases authorizing such discrimination by any of the defendant carriers.

At the institution of these cases, the defendants were making what is termed an "outage" allowance for alleged waste in transportation, of 62 gallons from the full capacity of the tank, with no corresponding deduction on barrel shipments. Notwithstanding this allowance, the shippers received pay for the full capacity of the tank. The testimony tends to show that the Union Tank Line, a department of the Standard Oil Company, was originally the only beneficiary of this practice, but the matter having become known to the other tank shippers, it was then extended to them. After the commencement of these proceedings the allowance was reduced

to 42 gallons. This practice was condemned by this Commission as being an unlawful discrimination in favor of the tank as against the barrel shipper, in the case of *Rice, Robinson & Witherop*, and also the recent case of *Rice v. Cincinnati, W. & B. R. Co.*, 5 I. C. C. Rep. 193, 3 Inters. Com. Rep. 841. Since the promulgation of the decision in the latter case, the Western New York & Penn. R. R. Co. has issued supplements to all its oil tariffs, effective September 1, 1892, providing, among other things, that "the minimum carloads of tank cars will be the full capacity of the tanks," and the "wastage" allowance has thus been wholly discontinued over the lines of defendants.

## II.

The question of the reasonableness in themselves of the rates now in force, exclusive of the charge for the barrel package in barrel shipments, will be next considered.

The defendants in the case against the Western New York & Pennsylvania R. R. Co., the New York, Lake Erie & Western R. R. Co., the Delaware & Hudson Canal Co., the Fitchburg R. R. Co., and the Boston & Maine R. R. Co., form a route over which petroleum products are transported in carloads from the Pennsylvania oil regions to Boston and New England points; the defendants in the case against the Western New York & Pennsylvania R. R. Co., the New York, Lake Erie & Western R. R. Co., and the Lehigh Valley R. R. Co., form a route over which such transportation is conducted from such oil regions to New York harbor points; and the defendants in the case against the Western New York & Pennsylvania R. R. Co. and the Pennsylvania R. R. Co. form what is known as the "Green Line" route from said oil regions to New York harbor. The "Green Line," as before stated, is a department of the Pennsylvania R. R. Co., having charge of and conducting the oil transportation over said route. These railroad companies are common carriers engaged in interstate transportation of petroleum from the western Pennsylvania oil regions eastward for the inland and export trade, and this transportation is conducted on joint through rates, except as to the Boston & Maine road, on which through rates are

made only to certain junction points. In addition to the roads against which the complaints are filed there are also so engaged the several roads heretofore named to whom leave was given to intervene and be heard as parties defendant. These last-mentioned carriers are parts of many different routes (see statement *supra* filed by complainants) by which petroleum products are or can be carried between the points named. In many instances the same railroad forms a link in several routes. The Western New York & Pennsylvania R. R. is the initial carrier in each of the three routes formed by the roads complained against, and is also the initial carrier in most of said other routes. All these routes form two classes; one composed of those carrying for the New England trade or Boston points, and the other of those carrying for New York harbor and vicinity, mainly for export. Each class, respectively, maintains the same rates. Those rates, so far as shown by tariffs on file with this Commission up to date, have been as follows:

**To Boston Points.**

Tariffs issued by Western New York & Pennsylvania R. R. Joint with the following lines:		To Boston and Boston points. From Titusv'l & Oil City.	
New York, Lake Erie & Western R. R.		In bbls.	In T. cars.
Nov. 10, 1887.....	Per bbl.	78	
(Note. This rate withdrawn by rates shown on Fitchburg R. R.)		(From Ti- tusville.)	
Fitchburg R. R.			
Sept. 3, 1888.....	Per 100 lbs.	25	25
Dec. 15, 1888.....	" "	23½	23½
West Shore R. R.			
April 23, 1887.....	Per bbl.	78	
July, — 1887.....	"		87½
Sept. 3, 1888.....	Per 100 lbs.	25	25
Dec. 15, 1888.....	" "	23½	23½
D., L. & W. D. & H. Canal Co's R. R.			
Sept. 3, 1888.....	Per 100 lbs.	25	25
Dec. 15, 1888.....	" "	23½	23½
Issued by Pennsylvania R. R. (Green Line).			
Feb. 20, 1888.....	Per bbl.	78	78
Oct. 3, 1888.....	"	100	78
Jan. 1, 1889 .....	"	94	74

As to rates prior to those shown in the above tables, the evidence tends to show that from Oil City and Titusville to New York harbor, over the Pennsylvania R. R. Co.'s Green Line, the open rate was 48 cents per barrel from about July, 1882, to February, 1884, and from the latter date to January, 1885, 52 cents per barrel. From both these rates a rebate of 13 cents was allowed, leaving the net rates for said periods, respectively, 35 cents and 39 cents. Beginning at January, 1885, the open rate of 52 cents was paid without any rebate, and from January, 1886, to September 3, 1888, the rate by all lines to New York was generally 52 cents per barrel, but there is evidence tending to show that in 1886 there was a rate of 60 cents to Jersey City.

About 1881, two pipe lines for conveying crude oil from the Pennsylvania oil regions to the seaboard were completed, the Tide Water Pipe Line and that of the National Transit Company. The Tide Water Pipe Line was first constructed. Both these pipe lines are carriers of crude oil between the points named, and originally were in competition with each other and with the rail lines. The low rates prevailing by rail from about 1881 to about January, 1885, are, it is claimed, attributable to this competition. Under this competition the rates reached a very low, if not unremunerative, figure, both by pipe and rail, and about December, 1883, the pipe lines, with a view of getting better rates, adjusted their differences and the competition between them ceased. The pipeline business appears then to have passed into the control of the National Transit Company. The Pennsylvania R. R. Co., about 1885, entered into the contract with the National Transit Company, which, as set forth in the complaint against the Pennsylvania Company and the Western New York & Pennsylvania Company, is a contract "for the pooling or division of the traffic on oil between the Pennsylvania Company and the National Transit Company, one consideration of which contract was the maintenance of the same rates on oil by the railroad and by pipe line, and under and by virtue of which the said National Transit Company guarantees to the Pennsylvania R. R. Co. twenty-six per cent. of the entire oil traffic from the Pennsylvania oil regions to tide-water." The Penn-



sylvania R. R. Co. admits the contract substantially as stated by the complainants, but avers "that the sole purpose of it was to secure and maintain a reasonable and compensatory rate to itself for the service to be rendered; that the rates now charged are only reasonable and just, and that it would be impossible to carry said traffic at a lower rate without entailing upon itself unreasonable loss." The evidence tends to show that under this contract the rate of 52 cents per barrel for tank and barrel shipments was put in force both by the pipe lines and by the Pennsylvania Company, and was thereupon adopted by all the class of lines to New York harbor points. September 3, 1888, notice was given of an advance of 14 cents per barrel for the weight of the barrel on barrel shipments, to become effective September 13, 1888, making the rates on such shipments 66 cents per barrel.

On the basis of the estimated or constructive weights placed by the carriers on oil by the gallon in tank shipments and on the barrel and its contents in barrel shipments (which weights will be considered further on), both the 52 cents rate and 66 cents rate amounted (when they were adopted) to 16½ cents per hundred pounds of oil transported.

The evidence is to the effect that from 1882 to about March, 1883, the rate to Boston was 65 cents per barrel on both barrel and tank shipments out of which 5 cents was refunded for cartage; that at the latter date, the rate was advanced to 80 cents, with the same reduction for cartage; and that from 1884 to July, 1885, there was what is termed an "export rate" to Boston of 80 cents, with a rebate of 26 cents, making a net "export rate" of 54 cents. The rates of 94 cents per barrel in barrel shipments and 74 cents per barrel in tank shipments (shown in the table of rates to date heretofore given) were estimated to amount to 23½ cents per hundred pounds of oil transported.

The following tables introduced in evidence on the part of the defendants show the rate, to within a small fraction, per ton per mile under present through rates, exclusive of the charge for the barrel package, from Oil City over the routes named to New York, to New York harbor and to Boston:



OIL CITY TO NEW YORK.

18½c. per 100—\$3.70 per ton.

Rate per ton per mile *via* different routes.

*Via* W. N. Y. & P. and P. R. R. 526 miles—7 mills.

*Via* W. N. Y. & P. and West Shore, 566 miles—6 5-10 mills.

*Via* W. N. Y. & P. and N. Y., L. E. & W., 520 miles—7 1-10 mills.

*Via* W. N. Y. & P. and N. Y. C. & H. R. R. R., 582 miles—6 3-10 mills.

*Via* W. N. Y. & P. and D. L. & W. R. R., 547 miles—6 7-10 mills.

*Via* N. Y., P. & O. and N. Y., L. E. & W., 551 miles—6 7-10 mills.

*Via* L. S. & M. S. and N. Y. C. & H. R. R. R., 659 miles—5 6-10 mills.

NOTE.—In the above rate to New York City is included a lighterage charge making it 2 cents higher than the rate to New York harbor points—the present rate is 19½ cts. per cwt.

OIL CITY TO NEW YORK HARBOR:—

16½c. per 100—\$3.30 per ton.

Rate per ton per mile *via* different routes.

*Via* W. N. Y. & P. and Lehigh Valley, 538 miles—6 mills.

*Via* W. N. Y. & P. and P. R. R., 526 miles—6 2-10 mills.

*Via* N. Y., P. & O. and N. Y., L. E. & W., 551 miles—6 mills.

OIL CITY TO BOSTON.

23½ per 100—\$4.70 per ton.

Rate per ton per mile *via* different routes.

*Via* W. N. Y. & P. and P. R. R.—“Wilkes Barre Route” 747 miles—6 3-10 mills.

*Via* W. N. Y. & P., West Shore and N. Y. & N. E. R. R., 738 miles—6 3-10 mills.

*Via* W. N. Y. & P., N. Y. L. E. & W. and Fitchburg, 641 miles—7 3-10 mills.

*Via* W. N. Y. & P., N. Y. C. & H. R. R. R. and B. & A. R. R., 636 miles—7 3-10 mills.

*Via* W. N. Y. & P., West Shore and Fitchburg, 633 miles—7 4-10 mills.

*Via* W. N. Y. & P., D. L. & W., D. & H. C. Co. and Fitchburg, 676 miles—6 9-10 mills.

*Via* N. Y., P. & O., N. Y. L. E. & W. and Fitchburg, 669 miles—7 mills.

*Via* L. S. & M. S., N. Y. C. and B. & A. R. R. 713 miles—6 5-10 mills.

The average receipts per ton per mile and estimated cost of carrying a ton a mile for the years ending June 30, 1888, 1889 and 1890, as appears from the reports of the roads named on file with the Commission, are shown in the following table:

AVERAGE RECEIPTS PER TON PER MILE AND ESTIMATED COST OF CARRYING ONE TON ONE MILE FOR THE YEARS ENDING JUNE 30, 1890, 1889 AND 1888.

NAME OF ROAD.	Average receipts per ton per mile.			Estimated cost of carrying 1 ton 1 mile.		
	1890.	1889.	1888.	1890.	1889.	1888.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Boston & Albany R. R.....	1.105	1.030	1.099	.791	.753	.819
Boston & Maine R. R.....	1.706	1.883	2.130	1.090	1.207	1.331
Delaware & Hudson Canal Co .....	1.156	1.237	1.229	.523	.529	.511
Delaware, Lackawanna & West. R. R.	.948	.983	1.070	.550	.581	.552
Fitchburg Railroad.....	.995	1.015	1.116	.733	.777	.840
Lake Shore & Michigan Southern R'y	.644	.632	.673	.458	.432	.411
Lehigh Valley R. R.....	.855	.942	1.039	.609	.591	.841
New York & New England R. R.....	1.220	1.344	1.192	.829	.932	1.154
N. Y. Central & Hudson River R. R..	.730	.712	.753	.512	.549	.557
Dunkirk, Allegheny V. & Pitts. R. R.	1.543	1.497	1.495	1.209	1.291	1.311
West Shore R. R.....(3)						
N. Y., Lake Erie & West. R. R....(1)	.665	.672	.589	.419	.407	.402
N. Y., Lake Erie & West. R. R....(2)	.572	.563	.716	.405	.437	.599
Pennsylvania R. R.....	.661	.685	.778	.457	.486	.521
Phil. & Erie R. R. (4) Northern Cent.	.605	.629	.649	.431	.456	.499
Western New York & Penn. R. R.....	.576	.600	.650	.424	.451	.460

(1) Line east of Salamanca, N. Y.

(2) Line west of Salamanca, N. Y.

(3) Included in New York Central & Hudson R. R.

(4) Included in Pennsylvania R. R.

To New York AND New York Harbor Points.

Tariffs issued by W. N. Y. & Pennsylvania R. R. Joint with following Lines.	To New York Harbor points.					
	To New York from Titus- ville and Oil City. Bbl. T.car.	To JerseyCity fromTitus- ville and Oil City. Bbl. T.cars.	To Perth fromTitus- ville and Oil City. Bbl. T.cars.	To Amboy fromTitus- ville and Oil City. Bbl. T.cars.	To Communi- fromTitusville and Oil City. Bbl. T. cars.	To paw
N. Y., Lake Erie & Western R.R.						
November 10, 1887..... Per bbl.		59)			52 (From Ti-	
March 3, 1888..... "		52) (fromTi-			tusville.)	
		tusville)				
September 3, 1888..... ₧ 100 lbs.		16½	16½			
October 17, 1889.....	18½	18½				
West Shore R. R.						
April 23, 1887..... ₧ bbl.	58	58			52	
July, 1887..... "						52
September 3, 1888..... ₧ 100 lbs.	18½	18½				
February 10, 1892..... "	19½	19½				
D. L. & W. & Del. & H. Ca- nal Co.'s R.R. Dec.15, 1888 ₧ 100 lbs.	18½	18½				
Note. — Rates withdrawn, October 24, 1891.						
Lehigh Valley R. R						
September 3, 1888..... ₧ 100 lbs	18½	18½	18½	18½	16½	16½
Note.—Rates to New York withdrawn Oct. 20, 1891.						
Issued by Pennsylvania R. R. (Green Line.)						
April 8, 1887..... ₧ bbl.					52	52
February 20, 1887..... "		52	52	52	52	52
September 3, 1888.....		66	52	66	52	66

By a comparison of the foregoing tables it will be seen that the rates per ton per mile under the rates per hundred pounds now in force, exclusive of the charge for the barrel package, as shown by the first three tables, are less on several of the roads than the reported estimate in the last table of the cost of carrying a ton of general freight a mile, and are less than the reported average receipts per ton per mile on a majority of said roads.

Evidence was introduced tending to show a lower rate per ton per mile on refined oil between other points and on other lines than the rate per ton per mile under the rates and on the lines involved in these cases, and among others, that in 1886 the rates from Titusville to Indianapolis, Indiana, and other named western points, ranged from 40 cents per barrel of refined oil to Indianapolis, Indiana, to 90 cents per barrel to Omaha, Neb. and Minneapolis, Minn., and that these rates amounted to from 4 mills to 4.87 mills per ton per mile; also,

that the rate from Lima, Ohio, to New York on fuel oil in 1888 was 19 cents per hundred weight and 4.9 mills per ton per mile, and from New York to Chicago, on lubricating oil, 25 cents per hundred weight and 5.87 mills per ton per mile. While these rates amount to a less rate per ton per mile than the rates now under consideration, this is in many instances due to the greater mileage and it does not appear that the circumstances and conditions of the transportation in the two cases are substantially similar. Something more is required than the mere comparison of rates between different localities on different lines in order to establish the unreasonableness of a rate complained of.

Oil is transported over the lines of defendants under what is known as a commodity tariff and there is no regular classification of it in the Official Classification. The rate on oil is higher than the sixth class rate under the Official Classification. The sixth class rate from Titusville and Oil City to New York City was given as 15 cents per hundred pounds, less 3 cents lighterage, and to Boston as 18 cents. It is contended by complainants that a comparison of the "nature and value" of the commodities classified and rated as sixth class with oil, shows that the latter should receive a rate even lower than the sixth class rate. As oil shipped in tanks and in barrels must have the same rate, the fact should be duly weighed that in cases of tank shipments to the east there are no return loads and in barrel shipments but a small per cent.—the oil in the latter case rendering the cars unfit for the transportation of general merchandise. The evidence shows that, while the loss from fire is very small, if not insignificant, to the shipper, it has been at times very heavy to the roads—one fire alone from oil destroying about half a million dollars worth of property. These and perhaps other considerations are ignored by complainants in the views they present on the question of oil rates and classification. There is evidence that on the Boston & Maine system and some other New England roads oil is carried as a sixth class commodity and that in the first part of 1887 it was carried from the Pennsylvania oil regions to New York by some of the respondents as sixth class. The object of classification is to furnish a basis for

rate charges, but an incorrect classification would neither authorize an unjust rate nor render unlawful a just rate. The question is not one of classification, but as to the reasonableness of the rate under consideration. *Murphy v. Wabash R. Co.*, 5 I. C. C. Rep. 122, 3 Inters. Com. Rep. 725. The fact, if shown, that oil is charged a higher rate than other commodities of like nature and value would be a circumstance to be considered for what it was worth in connection with the other evidence bearing directly upon the reasonableness of the respective rates. Oil may be of like or less value than some articles of the sixth class, but it is different from most, if not all of them, in nature, and we are not prepared to hold under the proof that its transportation is conducted under substantially similar circumstances and conditions.

There is a net work of local pipe lines in the oil regions which convey the oil to the local refineries and to the railroads for shipment, and the charge for these services by these lines is 20 cents per barrel irrespective of distance. These local pipe lines by which complainants' refineries are served are operated for the most part, if not entirely, by the National Transit Company, which, there is evidence tending to show, is controlled by the Standard Oil Company. The oil regions are divided into three or four "oil fields." One of these is known as the "Bradford Field," and the price of oil quoted on the New York market is the price of the oil of this field. The complainants are in another field and get their oil from the district immediately surrounding them. The oil from this district being fresher is somewhat better than that from the Bradford district and there was about two years before the hearing a premium on it of 8 cents per barrel. The evidence tends to show that this premium represented about the excess in value of the oil in complainants' district and used by them over that in the Bradford district. This premium was, however, raised to 13 cents per barrel and about August 18, 1888, a short while before the 14 cents charge for the barrel package was placed on barrel shipments, it was raised to 20 cents per barrel. The complainants have to pay, therefore, 20 cents more for the oil used by them than the price of the Bradford oil, which is the New York market price, and this 20 cents,

according to the weight of the evidence, is 12 cents more than the difference in quality of the two classes of oil will justify. The evidence tends to show that complainants get their oil from the National Transit Company, and there is also evidence that the local pipe lines in order to secure the patronage of the producer bid against each other for the oil and that the advance in the premium is due in part at least, to this competition.

The complainants have introduced in evidence two statements of the results of refining 1,000 barrels of crude oil at Titusville and Oil City, respectively, the one showing a loss in refining of \$282.93 and the other, a loss of \$273.45. In the cost are included among other items, the above-mentioned premium of 20 cents per barrel and the pipeage to the railroad of 20 cents per barrel. These statements are dated, respectively, May 14 and May 15, 1889. The witness who made out one of these statements (Burwald) testified that the loss in refining had only been since January, 1889, and had gradually increased during February, March, April and May, 1889. He further stated that this was the dull season of the year in the oil business and that the greater part of the refining business is done from June to January. No item of transportation charges is embraced in these statements except the charge of 20 cents per barrel for the service of the local pipe lines, and the losses shown are the results of the refining up to the time of shipment on the railroad. The business of the refineries in the oil regions appears to have been generally unprofitable at the date of the hearings, and several of them had partially or entirely ceased operations. About 40 per cent. of the products of the crude oil is an inferior oil, which is for the most part exported and known as "export oil." In the export business, the refiners whose refineries are located in the oil regions are placed at a disadvantage with those of the Standard Oil Company and its allies at the seaboard near New York. The latter own or control the pipe lines to the seaboard, and also the facilities for transfer of the oil out of pipes and tank cars into bulk steamers or vessels. This, together with the fluctuating market prices of petroleum products and other matters hereafter referred to besides the cost

of rail transportation, have probably contributed to depress the business of the local refineries.

The complainants and their witnesses testify that the business of the local refineries cannot be conducted profitably, if at all, under the present rates. On the other hand, the officials and employes of the defendant railroads state that these rates barely afford a reasonable compensation and that any reduction will be ruinous to their business. In the case of complainants and their witness reference is had for the most part to the advance rate on barrel shipments for the barrel package, resulting in a through rate to New York points of 66 cents per barrel, and to Boston points at 94 cents per barrel. The charges in the complaints are against these *rates* as being excessive and unreasonable, and in the case against the Pennsylvania Railroad Company and the Western New York & Pennsylvania Railroad Company, the complainants set forth, that notwithstanding they were subjected to disadvantages by the rates prior to the institution of the barrel package charge in their "*export trade* in competition with their rivals affiliated to the Standard Oil Trust," still "they were enabled by their advantages in the *local markets* to maintain and even increase their business." It would appear from this statement and the facts elsewhere set forth as to the transportation and other facilities possessed by the seaboard refineries, that the complainants, or local refineries in the oil regions, had the advantage in the *local markets* and the seaboard refiners had the advantage in the *export trade*, and that the former so far counterbalanced or offset the latter, that under the rate existing at the time of the charge for the package was placed on barrel shipments, the local refiners were able to maintain and increase their business. In regard to the position of the defendants towards the old rates, as before stated in the discussion of the question of the discrimination as between tank and barrel shipments, the charge for the barrel package was not originally made by the roads on the ground that it was necessary in order to yield them a fair remuneration for the service of transportation, but only, as claimed by them, for the purpose of conforming to what they understood to be the ruling of this Commission. Two



of the roads against whom complaint is filed, the Fitchburg Railroad Company and the Delaware & Hudson Canal Company, in their answers express willingness for a reduction of the rates. On this point the Fitchburg Company says, that "it has no voice or control in the fixing of the rates and charges complained of, the same being made by the trunk lines," and "that it has no objection to the granting of complainants' petition so far as the same relates to the reduction of rates and is willing to take its proportion of the through rates should they be reduced as prayed for," and the Delaware & Hudson Canal Company, "That any rates which have been established for such freight, were established by the initial road without its knowledge and consent, and it is willing to accept any rates for such freight that may be adopted and established by the other roads in interest." In the original printed argument filed February 24, 1890, by counsel for the Pennsylvania Railroad Company, it is only contended that "the present rates charged, *aside from the additional rate charged on the package*, are just and reasonable." Referring to the testimony on this question, the counsel says, "that there is a consensus of opinion of the experts placed upon the stand, that the present rates *independent of the question of charge for the barrel package*, are just and reasonable" and "that complainants' as well as *defendants'* witnesses agree upon this point." This statement is correct as to at least two of complainants' leading witnesses, namely, A. D. Deming, President of the Independent Refiners' Association of Oil City (one of the complainants), and Louis L. Walt, of the Penn Refining Company. They stated in substance, that if the rates had remained as they were before the charge for the barrel package they would have been satisfactory and no complaint would have been made.

The 52 cents per barrel rate to New York points had been in force for a considerable period before the additional charge for the barrel package was instituted and no complaint is shown to have been made. Under this rate the complainants state they maintained and increased their business. The prior materially lower rates to New York points appear to have been the result of competition between two pipe lines



and the railroads. The rates per ton per mile under present rates, exclusive of the charge for barrel package, are not in excess of the reported average receipts per ton per mile on about twelve out of fifteen of the roads involved in these cases and interested in the question under consideration; they are much less than such average receipts on nine of them; and are less than the estimated cost of carrying a ton of general freight a mile on four of them. (See table, page 447.) While this rate is fully as high as it should be in view of the nature of the traffic and the conditions surrounding it and might possibly be made less without depriving the carriers of a fair remuneration for their service, we do not feel authorized under all the facts and circumstances disclosed by the record and evidence in these cases, to order a reduction in addition to the exclusion of the charge for the barrel package, and our conclusion is that the rate to New York points should be not more than  $16\frac{1}{2}$  cents per hundred pounds, both in tank and barrel shipments, to be charged in both cases only for the weight or quantity of oil carried, exclusive of any charge for the package.

### III.

The reasonableness of the oil rate from Oil City and Titusville to Boston and Boston points remains to be inquired into and in that connection the charge made by complainants against the roads forming lines between said points, that said rate is "disproportionate as compared with the rates for the like service on the like traffic under substantially similar circumstances and conditions from Oil City and Titusville to New York and New York points." The roads involved in this charge allege that the differential rates demanded and collected on the oil traffic to Boston and Boston points are just and reasonable, and in due proportion to those to New York and New York points. The present rates to Boston of 94 cents per barrel on barrel shipments and 74 cents per barrel on tank shipments were, as before stated, estimated to amount to  $23\frac{1}{2}$  cents per hundred pounds of oil transported. The 74 cent rate on tank shipments, which is on the oil alone, is 22

cents in excess of the 52 cent rate to New York points. It will be observed that in the table heretofore given of the existing rates, the rate to New York city was when these complaints were filed  $18\frac{1}{2}$  cents per hundred pounds of oil, being 2 cents more than that to New York harbor points. The rate now by the West Shore line (it has been discontinued by the others), is  $19\frac{1}{2}$  cents per hundred pounds, or 3 cents more than the New York harbor rate. This difference is made on account of the lighterage paid by the roads where the shipment is to New York city. The rate of  $19\frac{1}{2}$  cents per hundred pounds of oil according to the estimated weight of the contents of a barrel amounted to about  $61\frac{1}{2}$  cents per barrel. The rate to Boston, then, of 74 cents per barrel of oil is  $12\frac{1}{2}$  cents more than the rate to New York city, and, as above shown, 22 cents more than the rate to New York harbor points. The charge for the barrel package being held to be unlawful, our inquiry will relate to the rate of  $23\frac{1}{2}$  cents per hundred pounds, (estimated to be 74 cents per barrel on the contents of the barrel) common to both barrel and tank shipments to Boston. This  $23\frac{1}{2}$  cent rate per 100 pounds is 7 cents more than the New York harbor rate of  $16\frac{1}{2}$  cents per 100 pounds. The difference between the barrel rate including the charge for the package to Boston and that rate to New York harbor points is 28 cents, which is greater than the difference in the rates between said points on the contents of the barrel—the latter difference being, as appears above, 22 cents. *The complaint and most of the testimony on the subject relate to the rates including the barrel package charge and the disparity between those rates.* It will also be noted that the 74 cent rate to Boston is 4 cents less than the rate (78 cents per barrel) which had been in force about a year prior to the institution of the charge for the package in barrel shipments. As before stated, about March, 1883, a net rate of 75 cents was adopted, the rate being 80 cents, less a reduction of 5 cents for cartage, and from sometime in 1884 to July, 1885, there was a net "export rate" of 54 cents, which was the result of a rebate of 26 cents from the full rate of 80 cents. With the exception of this "export rate," the regular tariff rate from March, 1883, to the present time

appears to have been greater than the 74 cent rate (estimated 23½ cts. per cwt.) now in force on the barrel in tank shipments. the rate per ton per mile under this through rate is from 6.3 to 7.3 mills by the different routes given in the table *supra*.

This rate per ton per mile is not only less than the average receipts per ton per mile but also than the estimated *cost* of carrying a ton a mile on the following roads running to Boston and to Boston or New England points as reported by said roads and shown below:

Roads.	Average receipts per ton per mile.			Estimated cost of carrying a ton a mile.		
	1888. Cts.	1889. Cts.	1890. Cts.	1888. Cts.	1889. Cts.	1890. Cts.
Boston & Albany R. R..	1.099	1.030	1.105	.819	.753	.791
Boston & Maine R. R..	2.130	1.883	1.706	1.331	1.207	1.090
Fitchburg R. R.....	1.116	1.015	.995	.840	.777	.733
New York & New Eng- land R. R.....	1.192	1.344	1.220	1.154	.932	.829

The cost of transportation on the roads running to Boston and Boston points appears to be greater than that on roads to New York and New York points. The distance by shortest route from Oil City and Titusville to Boston is over a hundred miles greater than to New York and New York points and is still greater through Boston to Boston points. It is claimed that the volume of traffic to New York is very much larger than to Boston. There is also a terminal expense at Boston of about 1 cent per hundred pounds included in the Boston rate, which is not the case with the rate (52 cents) to New York harbor points. Moreover, the roads to New York harbor are in competition as to the oil traffic with the pipe lines. The evidence tends to show that the cost of transportation by pipe line is very much less than that by rail.

In the case of the *Boston Chamber of Commerce v. Lake Shore & M. S. R. Co.* 1 I. C. C. Rep. 436, 1 Inters. Com. Rep. 754, the Commission says: "The contention of petitioners for *equality of rates* with New York is not supported by equality of distance, of cost of service, or by other considerations,

such as volume of business, competition of rail and water ways, ocean service, terminal facilities and storage capacity—all elements of more or less importance in the determination of rates, and some of them of controlling influence.” The conclusion in that case was that the Boston Chamber of Commerce had not, “upon any legitimate grounds of rate making, maintained their application for *equality of rates* with New York for east-bound local shipments to Boston.” In the recent case of Toledo Produce Exchange v. Lake Shore & M. S. R. Co., 5 I. C. C. Rep. 166, 3 Inters. Com. Rep. 830, the propriety of higher rates to Boston than to New York from Chicago and other western points was maintained, but the methods pursued by the carriers in ascertaining the amount of the difference—that is, by a *fixed* arbitrary added to the New York rate—was condemned, and it was held that “the *arbitrary* differential between New York and Boston should be abandoned and the differential should be adjusted upon the basis of per centage.” The principal fact upon which this decision rests is, that the rate from Chicago to New York is taken as the basis for rates to Boston and other points. The system of making the rates to Boston and such other points by adding an arbitrary to the New York rate, which arbitrary remained the same notwithstanding changes or fluctuations in the New York rate, was held to be wrong in principle and calculated to work injustice. For example, the Commission say, “By the use of an arbitrary sum there is no proper proportion maintained, if the New York rate changes: thus, if the grain rate to New York were fifty cents the present arbitrary would make the Boston rate ten per cent. greater; and if the New York rate should be fifteen cents, the use of the present arbitrary would make the Boston rate 33 per cent. greater.” In the matter now under consideration of the oil rates from Titusville and Oil City to New York and Boston, respectively, it does not appear that the former is the basis of the latter or that the difference between the two rates is an arbitrary fixed differential. As will be seen from the tables of rates heretofore given, the difference between the oil rates to New York and Boston has varied from time to time and the difference on the contents of the barrel

is less now by four cents than it was prior to the adoption of the charge for the barrel package.

Oil is not classified but has a special commodity rate. The circumstances and conditions attending its transportation from the Western Pennsylvania oil regions to New York and New York harbor are, as we have shown, materially variant from those which affect that transportation to Boston and New England points, and particularly, *in the matter of pipe line competition*. In view of all the foregoing facts bearing on this question, and the matters hereinafter discussed, which are not subject to regulation by this Commission, and which, independent of the rates in question, place the refiners at Oil City and Titusville at a disadvantage as to the New England trade with the seaboard refiners at New York harbor, we are not prepared to hold that New York and Boston rates on the contents of the barrel (to which our inquiry is now limited) are unjustly discriminative or relatively unreasonable as between those cities. We are also of the opinion that it has not been made to appear that a Boston rate of  $23\frac{1}{2}$  cents per hundred weight of oil transported, common to barrel and tank shipments and exclusive in both cases of any charge for the package, is in itself unjust or unreasonable. As before shown, this rate is less than the rate previously in force and against which no complaint appears to have been made. The present complaint it is to be noted, is against *the rates with the barrel package charge included*.

The Western New York & Pennsylvania Railroad Company issued a tariff sheet, dated April 27, 1888, giving Boston rates on east-bound shipments from Oil City and Titusville in carloads to about one hundred and forty points reached by the Boston & Main system, including Manchester N. H., Salem, Mass. and Portland, Me. These through rates were abrogated by order dated October 25, 1888, taking effect Nov. 6, 1888, and since that time through rates have been made by the Western New York & Pennsylvania line only to its points of junction with the Boston & Maine road, from which junction points the local rates are charged to points of destination. The reason assigned for the withdrawal of the through rates to those points, is, that the proportion of the through rate

demand by the Boston & Maine road was so great that the other roads could not afford to maintain it. Only four or five days notice to shippers and the public of the abrogation of the rates was given. The notice is dated over 10 days before it was to become effective, and the General Freight Agent of the Western New York & Pennsylvania R. R. Co. testified that the 10 days' notice required by law would have been given but for the failure of the clerk to whom the matter was intrusted to follow instructions, and that the road offered to refiners to protect any shipments made by them under the canceled rates prior to the time when the regular ten days' notice would have expired. There is no other evidence on this point, and it does not appear that the failure to give the notice the required time was *willful*, or that in consequence thereof any *injury* has been sustained by any shipper or other person. Railroad Commission of Florida *v. Savannah, F. & W. R. Co.*, 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688. The complainants in their printed brief request this Commission to order a restoration of the through rates abrogated as above stated. Joint through rates are matters of contract or agreement among carriers engaged in interstate commerce, and this Commission has no power under the statute to compel them to enter into an arrangement for such through rates. *Capehart v. Louisville & N. R. Co.*, 4. I. C. C. Rep. 265, 3 Inters. Com. Rep. 278; *Little Rock & M. R. Co. v. East Tennessee & G. R. Co.*, 3 I. C. C. Rep. 1, 2 Inters. Com. Rep. 454.

The evidence tends strongly to show that the Standard Oil Company and its allies own or control the pipe line system to New York harbor points. Whether or not they pay the regular rates does not appear. If they own the pipe line the payment of freight charges would be merely going through the process of "taking money out of one pocket and putting it in another;" if they control them, they can, and probably do, dictate terms as to rates. Whether or not they own the facilities at the seaboard for transshipment of tank oil to bulk steamers or vessels, they have a monopoly of those facilities to the exclusion of complainants. The crude oil is run by them through the pipe lines to the seaboard and there refined.

They then ship it by sea (a cheap mode of transportation) to points along the New England coast where reservoirs are prepared for its reception. From these receiving stations the oil is carried to interior New England points. By reason of their superior facilities great advantage in the way of cheap transportation, together with the abrogation of the through rates on the Boston & Maine Railroad system, these refiners at the seaboard near New York are, as competitors of complainants, enabled to undersell them at New England points. The complainants being for the most part barrel shippers, the charge for the barrel package has also contributed to this result. The facilities for transshipment at the seaboard do not appear to be furnished by, or to be under the control of the railroads. It cannot be affirmed with any degree of certainty that the disadvantageous position of complainants with reference to the New England trade is attributable to rates, the regulation of which is within the control of this Commission under the Act to regulate commerce.

The fact that the 52 cent rate to New York harbor points was the result of the contract between the Pennsylvania R. R. Company and the National Transit Company even though the latter Company be an ally of, or owned and controlled by, the Standard Oil Company, will not invalidate that rate, if it be in itself just and reasonable. It is contended by complainants that this contract is in violation of section 5 of the Act to regulate commerce, which relates to pooling of freights and division of earnings by common carriers subject to the provisions of the Act. That section provides, "That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of *freights of different and competing railroads*, or to divide between them the aggregate or net proceeds of the earnings of *such railroads*, or any portion thereof." The contracts, agreements or combinations forbidden are those "for the pooling of freights of different and *competing railroads*," or for the division of the earnings "of *such railroads*." The contract under consideration is not one for the pooling of



freights of different railroads, or for a division of the earnings of different railroads, but for a division of traffic between a railroad and a pipe line. A railroad is not interdicted from pooling with a competing pipe line. This contract, therefore, does not fall within the description of contracts forbidden in the Act. On this ground the Commission has in the matter of Express Companies expressed the opinion that such companies when in competition might pool their earnings without being guilty of a violation of the law. *Re Express Companies*, 1 I. C. C. Rep. 368, 1 Inters Com. Rep. 677. Although transportation by express companies and pipe lines should doubtless be made subject to the provisions of the Act to regulate commerce, the failure to make them so can be remedied only by Congress.

When a motion was made by complainants' counsel for the production of the contract between the Pennsylvania R. R. Company and the National Transit Company, it was resisted by counsel for the Pennsylvania Company on the ground, among others, that it might furnish evidence which would tend to criminate that company. The Commission denied the motion for the reason that if put in evidence the contract would be material only for the purpose of throwing light on the question of the reasonableness of the rates complained of and the facts which the complainants alleged would be shown by the contract had been admitted in the answer of the defendant and therefore the production of the contract itself was unnecessary. In this connection, however, it was said that it was "within the power of the parties holding this contract to remove by its production any proper legal inference that might be drawn from the facts that are admitted and that if not produced they are probably prepared to accept whatever legal consequences may follow from a refusal to produce." It is difficult to conceive of any legitimate inference consistent with absolute fair dealing to be drawn from the refusal to produce the contract, and, particularly, when one of the grounds of the refusal is that above stated. The precise date of this contract is not shown but it appears to have been made in the first part of 1885. About August 18, 1888, the advance to 20 cents per barrel of the premium on oil



used by complainants took place; a little over two weeks thereafter, on September 3, 1888, the charge for the barrel package in barrel shipments was adopted; and on October 25, 1888, the through rates to points on the Boston & Maine Railroad system were abrogated. These three events, occurring within a period of two months and a week, all prejudicial to the complainants as refiners at Oil City and Titusville, and advantageous to those at the seaboard in the vicinity of New York, lend color to, if they do not substantiate, the charge made by complainants of concert of action between the roads immediately concerned and the seaboard refiners for the purpose of favoring and giving an undue advantage to such seaboard refiners to the disadvantage and at the expense of complainants. The defendants are not shown, however, to be in any way responsible for the advance in premium and it does not appear to be a matter subject to regulation by this Commission, and, as before stated, we have no power to order a restoration of the abrogated through rates.

By the supplements of the Western New York & Pennsylvania R. R. Company to its oil tariffs, effective September 1, 1892, heretofore mentioned, not only was the "wastage" allowance in tank shipments discontinued, but the estimated weight of a gallon of tank oil was raised from 6.3 lbs. to 6.4 lbs. Fifty gallons being the contents of a barrel, as adopted by the roads for transportation purposes, the weight per barrel at 6.3 lbs. per gallon was 315 lbs., and, at 6.4 lbs. per gallon, it is 320 lbs.—a difference of 5 lbs. The rates per hundred pounds are unchanged. At the rate to Boston and Boston points of 23½ cents per hundred pounds, the 5 lbs. increased weight would amount to an increase of rate on tank shipments of 11.7 mills per barrel, and at the 16½ cent per hundred pound rate, to New York harbor points, to 8.2 mills. This increase of rate per barrel on tank shipments is inconsiderable *in comparison* with the greater charges on barrel shipments (arising from the charge for the barrel package) than on tank shipments to those points, which are, respectively, 20 cents and 14 cents. By the Pennsylvania R.R. (Green Line) the oil rate is by barrel alone and not by the hundred pounds. The barrel rate by that line appears to have remained unchanged. This being

the case and the number of gallons per barrel remaining the same, the increase of weight per gallon can effect no change of rates as to that line. Where the rate is by the barrel and remains unchanged, an *actual* increase of the weight of the contents will effect a decrease of rate as more oil will be hauled for the same price, but if there is no actual but only an estimated increase of weight of contents there will result no change of rate, as the same quantity will still be hauled for the same price. While the weight of the tank gallon was at the commencement of these proceedings and until recently (September 1, 1892) placed by the carriers at 6.3 lbs., the weight of the barrel and contents in barrel shipments was placed at 400 lbs.—the contents in both cases being 50 gallons. These weights of the gallon and of the barrel and contents, are *estimated* weights and it is shown in the case of *Rice v. Cincinnati W. & B. R. Co.*, 5 I. C. C. Rep. 193, 3 Inters. Com. Rep. 841, that they vary materially from the actual average weights, and result in “a constant and appreciable advantage to the shipper in tanks. The grounds of this ruling are clearly and forcibly stated in the opinion in that case and need not be repeated here. The raise in the weight of the tank gallon was made since that decision was rendered, and, being without a corresponding raise in the weight of the barrel and contents in barrel shipments, was, doubtless, intended to do away with the discrimination in this respect against the barrel shipper. The order of the Commission in that case was that the defendants “base their charges on petroleum and its products upon the *actual weight* of shipments whether in tanks or barrels; and for all cases where actual weights cannot be ascertained without great inconvenience,” that they “adopt and employ such a rule or method of estimating weights as shall practically operate to secure to the shipper in barrels, for the same aggregate sum as may be paid by the shipper in tanks in any case, the transportation between the same points of an equal amount of freight paid for.” (This order, it was declared, should not “be understood as authorizing charges on barrels when tanks are carried free, that question being expressly reserved for further consideration.”) The raising of the gallon tank

weight from 6.3 lbs. to 6.4 lbs., the weight of barrel and contents being estimated at 400 lbs. as before, is not a compliance with the order that "charges on petroleum and its products be based upon *actual weight* whether in tanks or barrels." Whether the condition exists on which the alternative requirement of the order is based, that "actual weights cannot be ascertained without great inconvenience," and if so, whether the raise of the tank gallon weight to 6.4 lbs. meets that requirement, we abstain from determining on the facts and evidence now before us, and these cases will be held open for further developments and investigation in reference to these matters. As for the Pennsylvania R. R. (Green Line), as we have seen, the rate being by barrel alone both in tank and barrel shipments, the increase in estimated weight of the tank gallon effects no change in the relative rates on tank and barrel oil.

The practice of making arbitrary reductions in computing freight charges from the actual amount of the commodity transported and for which the shipper receives pay, as in the case of the discontinued "wastage" allowance on tank shipments, and of *estimating* weights where it is practicable to ascertain actual weights opens the door for preferences, discriminations and evasions of the law. The material facts as to estimated weights in tank and barrel shipments being substantially the same in the present cases as in the cases of *Rice v. Cincinnati, Washington & Baltimore R. R. Co.*, the order above recited, issued in the latter case, is adopted in the present cases and the defendants herein are directed to comply therewith.

It is further ordered, That the defendants' cease and desist from charging or collecting any rate or sum for the transportation of the barrel package on shipments of oil in barrels over their roads or lines from the oil regions of Western Pennsylvania to New York and New York harbor points or to Boston and Boston points; or, on reasonable notice, promptly furnish tank cars to complainants, and others who may apply therefor, for the purpose of loading and shipping oil therein to such New York harbor and Boston points as the shippers may direct; and that said defendants notify the public accord-

ingly by publication in their tariffs of rates and charges, pursuant to the provisions of section 6 of the Act to regulate commerce, and also file copies of said tariffs with this Commission as required by the provisions of said section. It is further ordered that the rate on shipments of oil both in tanks and in barrels over said roads shall be the same and said rate from said oil regions to New York points shall not exceed  $16\frac{1}{2}$  cents per hundred pounds, and to Boston and Boston points shall not exceed  $23\frac{1}{2}$  cents per hundred pounds; and the defendants are required to refund to the several parties legally entitled thereto, within 60 days after notice of this decision and demand thereof by such parties, all sums received by them for transportation over their roads of the barrel package on shipments of oil in barrels, when the use of the tank cars has not been open to shippers impartially, and the shipper claiming reparation has been thereby deprived of their use.

Inasmuch as the amounts wrongfully received from the complainants respectively cannot be ascertained from the evidence already taken, the proceedings will be continued for such further action or inquiry in that behalf as may become necessary.

We desire to supplement our conclusions in this case with the following remarks:

In the cases at bar the principal cause of alleged unlawful discrimination is the charge for the barrel, and our attention has been particularly directed to that feature of the transportation. In order to guard against misapprehension the Commission wishes to say that these cases are decided purely upon the facts as set forth and the situation as delineated in the record and by the evidence. It is not intended to hold, nor should this report be construed to hold, that, aside from other controlling circumstances, the carrier in hauling packages is not entitled to pay according to the weight thereof. It is simply held that on account of the peculiar circumstances in these cases to charge for the weight of the barrel places barrel shippers at a disadvantage as against tank shippers, and the practice in these cases, while the circumstances and conditions remain unchanged, should be condemned.

It was stated in the Rice cases, 5 I. C. C. Rep. 193, 3 Inters. Com. Rep. 841, that

“ Whether the advantages which the tank shipper apparently enjoys are a mere incident of his business, for which the carrier should not be held responsible, or whether these benefits result from discriminating usages adopted by the railroads, and their failure to supply all customers with a special vehicle suited to the demands of a special traffic, must be, in any particular case, a most perplexing inquiry. To require the barrels in which this article is shipped to be carried without expense is contrary to the general and lawful custom which includes the package in the freight to be paid for; yet, in certain situations and under certain circumstances, there may be no other remedy for actual injustice, and no other effectual means by which the carrier can render equal and impartial service to every patron.

“ We have already taken occasion to point out the only instance in which this precise claim has been heretofore made or allowed, and in doing so have sought to emphasize the proposition that rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance.”

These Rice cases cover the greater portion of the country, and the conditions of transportation and of commerce vary greatly in the different sections affected by the controversies; but the cases now under consideration relate to the transportation of oil from refineries to the seaboard, and through a comparatively small territory in which the Commission has been investigating cases involving oil transportation for a number of years. Upon the facts herein we are forced to the conclusion that the only practical remedy for the unjust discrimination now existing is to give defendants the alternative of abolishing the charge for the barrel, and in so doing we are only permitting them to return to a practice which they followed during a long period, which they only discontinued under a mistaken construction of our original Rice decision, and which they now seek to justify on wholly different grounds.

**IN THE MATTER OF ALLEGED UNLAWFUL CHARGES FOR THE TRANSPORTATION OF COAL BY THE LOUISVILLE & NASHVILLE RAILROAD COMPANY.**

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Order served July 16, 1891.—Answer filed, August 14, 1891.—Depositions filed, December 21, 1891.—Hearing had March 30, 1892.—Briefs filed April 12 to 16, 1892.—Decided November 17, 1892.

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Upon investigation had in a proceeding instituted by the Commission on its own motion, it appeared that the respondent had in force over its line to Nashville a special rate on coal when used for manufacturing purposes by persons named upon the manufacturers' lists prepared by the railroad company. These lists were furnished to dealers who, on selling coal to such manufacturers, issued certificates which entitled them to obtain a refund from the railroad company amounting to the difference between the regular and special rates. Pending investigation the respondent discontinued the "manufacturers' rate," and put in force a new coal tariff to Nashville whereby coal, "run of mines, nut and slack," is given the rate of \$1.00 per ton the year round, and "screened" coal a rate of \$1.15 per ton, April to September, and for the remainder of the year a rate of \$1.40 per ton. The rate from the same mines to Memphis, a point affected by water competition for coal traffic, is \$1.40 per ton on all coal the year round, and respondent buys coal at the mines and sells it in the Memphis market. *Held,*

1. That the practice abandoned by the respondent common carrier of arbitrarily determining what persons should receive the so-called "manufacturers' rate" was a clear violation of the Act to regulate commerce.
2. That the rate of \$1.00 per ton charged by respondent upon coal, "run of mines, nut and slack," is not unreasonably low, nor disproportionate to the rate of \$1.40 per ton to Memphis; neither, in view of circumstances affecting coal traffic at Memphis, is a rate of \$1.15 on screened coal to Nashville relatively unreasonable as compared with the Memphis rate, but so long as the Memphis rate does not exceed \$1.40, rates on said kinds of coal from the mines to Nashville should not during any portion of the year exceed \$1.00 or \$1.15, respectively, and any reduction in the Memphis rate should be accompanied by proportionate reductions in rates on said different kinds of coal to Nashville.

*Ed. Barter*, For L. & N. R. R. Co.

*J. P. Bradford*, for United Electric Railway.

*George H. Armstead*, for Nashville Commercial Club.

## REPORT AND OPINION OF THE COMMISSION.

McDILL, *Commissioner*:

This proceeding had its inception in a letter addressed by the United States District Attorney for the Middle District of Tennessee, to the Attorney General of the United States, which letter was referred by the Attorney General to the Interstate Commerce Commission for its attention. The Commission, shortly after receiving this letter, issued a notice and order, reciting that informal complaints had been made against the Louisville & Nashville Railroad Company, of unjust and unreasonable discrimination in charges for the transportation of coal, as follows: First, from different points of production, to Nashville, Tenn., as compared with the charges made for the transportation of the same commodity from the same place to Memphis, Tenn., and particularly that the rates from Earlington, Ky., to Nashville, were unjustly discriminating as compared with the rates from the same place to Memphis.

Second, that unjust discrimination was effected by the said company through the medium of rebates, between its various patrons in the city of Nashville, consisting particularly in this, that said railroad company allowed such rebates to some manufacturers and to persons engaged in running steamboats which were not allowed to the Electric Street Railroad Company of Nashville, and to other patrons of the Louisville & Nashville Railroad.

The notice further recited that the Interstate Commerce Commission had decided, on its own motion, to investigate these complaints, and it was thereupon ordered that the Louisville & Nashville Railroad Company answer the complaints above specified, and particularly state:

“First, what rates does it now charge, and what rates had it charged during the twelve months last past, for the transportation of coal from Earlington and other mines in the state of Kentucky, Jellico and other mines in the state of Tennessee, to Nashville and Memphis in the state of Tennessee.

“Under what circumstances, if any, and for what reasons,



does the Louisville & Nashville Railroad Company pay rebates to any person or persons at Nashville or Memphis aforesaid, on account of shipments of coal from any of the Kentucky and Tennessee mines, to this city; and if any rebates have been paid on that account during the twelve months last past, when, to whom, and in what amounts."

To this notice and formulation of complaints a paper in the nature of an answer, was filed by S. R. Knott, Traffic Manager of the Louisville & Nashville Railroad Company dated August 1, 1891. In this paper it is admitted that the rates which that company was then charging, and had for the last twelve months charged, for transportation from the coal districts on the Owensboro Division and the Henderson Division of the Louisville & Nashville Railroad Company, were from April 1st to July 1st, one dollar per ton; and then an increase of ten cents per ton during each month, (commencing with July) until November 1st, when the rates per ton reached a dollar and a half, at which figure they remained until April 1st, following.

From the mines on the Knoxville Division, embracing Jellico, the rates were all the time ninety cents higher than those above mentioned.

But the above rates were the general tariff rates; and it was admitted and explained by Mr. Knott that on manufacturers' coal, so called, from the Henderson and Owensboro divisions, the rate the year round, was five cents a hundred, or a dollar per ton. The rates to Memphis from points on the Henderson and Owensboro divisions, Mr. Knott stated to be one dollar and twenty cents per ton; from the Knoxville Division to Memphis, they were, as stated by him, two dollars and forty cents per ton, as of July 1st, 1890, and two dollars and sixty cents per ton, as of August 7th, 1890. Mr. Knott also stated that prior to June 5th, 1890, the rates from mines on the Henderson and Owensboro divisions to Memphis were one dollar and forty cents per ton for a time, and still prior to that time they were one dollar and sixty cents per ton.

This answer also admits that the average distance from the coal mines on the Henderson Division to Nashville is about



one hundred miles, Earlington, the principal shipping point, being one hundred and five miles from Nashville. The average distance of the same mines from Memphis is about two hundred and sixty miles. On the Owensboro Division the average distance of the mines from Nashville is about one hundred and seven miles, and from Memphis about two hundred and fifty miles. The distance from Jellico *via* Louisville & Nashville lines to Nashville, is three hundred and twenty-five miles, and to Memphis five hundred and seventeen miles. There are no special rates given to manufacturers, or on manufacturers' coal at Memphis.

This answer sets up the competition at Memphis of coal brought by the river from Pittsburgh, in explanation of the low rate made by the Louisville & Nashville road on coal over its various divisions to that city, and states that the rate of one dollar and twenty cents was reluctantly agreed to by the lines hauling coal from Kentucky to Memphis, as a matter of necessity, and not as a remunerative rate, but to aid the operators to continue their coal in that market if practicable.

The answer offers the following explanation of the uniform one dollar per ton rate allowed on steam coal from mines on the Henderson Division and Owensboro Division to Nashville.

"As above shown, the L. & N. has a rate on coal to Nashville from these districts, when used for production of steam for manufacturing purposes, of 5c. per hundred pounds, or one dollar per ton. The L. & N. Co. pays no rebates to any party at Nashville on account of shipments of coal from any of its mines in Kentucky. It does, however, refund the overcharges accruing between the rate on domestic coal effective from time to time, and the rate on steam coal, when such coal is used for manufacturing purposes. Owing to the manner in which coal on the Nashville market is handled by the several operators, through their agents, no other method of protecting the agreed legal rates issued from time to time on coal, whether for manufacturing or other purposes has been considered as more effective than the rules under which we are now operating. We find that it imposes much labor

upon our accounting departments which we would under ordinary circumstances gladly be rid of. At Nashville the coal is largely, in fact, almost entirely, consigned by the operator to his agent at that point. There is no specific or exclusive grade of coal used for manufacturing purposes but the several grades of coal are used equally for manufacturing or other purposes, and frequently, for their own convenience, agents deliver part of a carload to a domestic consumer and a part of the same carload to a manufacturer. While the rate on domestic coal to Nashville, considering the value of that article at the mines and the price for which it is sold, as now fixed, is believed to be entirely reasonable, the railroad companies hauling the coal to Nashville were willing and anxious to co-operate with the manufacturers and the coal operators in furnishing that market with a good class of steam coal for manufacturing purposes at low prices, so long as it could be done without a reduction of revenues on other traffic which the transportation lines were carrying at just and reasonable rates. With this object in view and also in view of the circumstances under which coal is shipped to Nashville as above mentioned, the present plan of making and protecting rates on coal for manufacturing purposes has been allowed for several years, and I think to the satisfaction of all manufacturers at that point and in no way tending to increase the price or cost of fuel for any other purposes. It has been an advantage to the manufacturers as well as to the producer.

“The overcharges are settled on statements submitted by the several agents handling coal on the Nashville market. The Nashville manufacturer who has used the fuel makes a certificate to that effect.”

The names of a number of parties who, as manufacturers, have received this advantage are set forth in the answer, and in reference to the Street Railroad Company it is then stated:

“We have declined to extend the manufacturers' rate to the United Electric Street Railway Company of Nashville. Our rates to that point are well known. The rules governing

the manufacturers' rate and the reason for such rate are equally well known. They have been a matter of discussion in the public print and before committees of commercial and legislative bodies.

"We do not extend this company the benefit of the manufacturers' rate because we do not recognize it as a manufacturer. We do not believe that the circumstances governing the conduct of its business at Nashville, are such as to require or even permit of our making a special concession in favor of that company, not made to other consumers at that point, and we have declined therefore, from time to time, to concede the request for such special concession in its fuel rates which the United Electric Railway Company at Nashville has made upon us from time to time, even when coupled with threats of attack through courts, the legislature and the public prints, as they have been. We do not believe that our rate on coal to Nashville, whether for manufacturing or other purposes constituted any unjust or illegal discrimination against that point or against any consumer there, but, on the other hand, that they are only fair and reasonable compensation for the service performed."

A large amount of testimony was taken in the case which establishes the following

#### FACTS.

The Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company are the only railroad companies by which the coal in question is brought into Nashville. The coal is brought over the Louisville & Nashville, from points north of Nashville in Kentucky, and from points south of Nashville in Alabama. The coal is brought over the Nashville, Chattanooga & St. Louis Railway from points south-east of Nashville, but in the same state—Tennessee.

The Louisville & Nashville owns a controlling interest in the stock of the Nashville, Chattanooga & St. Louis, and the coal rates over both lines into Nashville are made and maintained by agreement or "understanding" between the traffic

officers of the two companies. There is no competition between railroad companies in the transportation of coal to Nashville. The Louisville & Nashville and the Nashville, Chattanooga & St. Louis also worked in harmony under an understanding to the following effect: from the coal mines in western Kentucky, on the Louisville & Nashville lines, and from the mines in Tennessee on the Nashville, Chattanooga & St. Louis lines, a rate was made to general consumers of coal in Nashville carrying according to the season of the year from \$1.00 to \$1.50 per ton, but to "Manufacturers," the minimum rate of \$1.00 per ton was accorded the year round.

Who the "manufacturers" were, who should be given this specially advantageous rate, was a matter determined entirely and exclusively by the railroad companies. The companies were in the habit of issuing lists of persons entitled to manufacturers' rates, and of changing the lists at their pleasure by either adding names of new parties or striking off names which had previously been placed there. And it very clearly appears that in some instances business men, firms or companies were refused the special rate, whose occupation would seem to be much more properly termed "manufacturing" than that of other parties to whom the special rate was given.

The "manufacturers' rate" so called was not established by a direct contract or agreement between the railroad companies and the "manufacturer," but was applied in manner following.

Consumers of coal at Nashville, whether for domestic or manufacturing purposes, make their purchases from coal dealers in the city. The dealers were furnished by the railroad company with a "manufacturers' list" made up by the company. Shipments were made to the dealers and the regular domestic coal rate was charged them, on all shipments. But on receiving from the dealers a certificate that certain quantities of coal had been sold by them to parties on the "manufacturer's list," the railroad companies would refund the difference between the rate paid, and the lower "manufacturers' rate."

The dealers did not however get any personal advantage from this refunding. The benefit thereof went entirely to the

consumer—"manufacturer"—in the reduced price made to him by the dealer.

From Earlington, Kentucky, and other Kentucky mines on the Henderson and the Owensboro divisions of the Louisville & Nashville road to Nashville, the manufacturers' rate on coal the year round was 5 cents per 100 lbs. or \$1.00 per ton, the benefit thereof being given according to the direction of the railroad company, in the manner above described.

From the same mines to Nashville, the rate made to all other persons was \$1.00 per ton during April, May and June, \$1.10 per ton during July, \$1.20 per ton during August, \$1.30 per ton during September, \$1.40 per ton during October, and \$1.50 per ton from the 1st of November to the last of March.

The rate from the same mines to Memphis is now and since September 1st, 1891, has been \$1.40 per ton. This rate has remained the same during all seasons of the year and is made on all coal whether to be used for domestic or manufacturing purposes.

The mines on the Henderson division of the Louisville & Nashville road in Kentucky, are grouped along the road some twenty miles, and are from 90 to 110 miles from Nashville—Earlington the largest shipping point on that division is 105 miles from Nashville. The mines on the Owensboro division are located along some 15 miles of the road and are from 103 to 118 miles from Nashville.

From the various mines on the Henderson division to Memphis the distance is from 250 to 270 miles, and from the mines on the Owensboro division to Memphis the distance is from 245 to 260 miles.

The Louisville & Nashville itself buys coal at these mines to sell in the Memphis market where it has an agency for the purpose. Of the total shipments of coal during the four years prior to Nov. 1st, 1891, over the Louisville & Nashville road to Memphis—amounting to about 193,000 tons, that company through its coal agency sold about 83,000 tons.

The Louisville & Nashville, so far as appears from the testimony, has no coal agency in Nashville, and sells no coal there.

Pending the investigation in this case, the Louisville & Nashville Railroad Company has put in a new coal tariff from the western Kentucky mines to Nashville, taking effect April 1st, 1892. By this the "manufacturers' rate," has been abolished, and the company has relinquished the custom of arbitrarily deciding who are "manufacturers" entitled to the rate. The rates are now fixed according to the character of the coal transported, not according to the business or occupation of the person by whom it may be used. At present there is a uniform rate from the western Kentucky mines to Nashville of \$1.00 per ton to all persons, on the kinds of coal known as "run of mines, nut and slack," and this rate does not vary with the season. On "screened coal" the rate is \$1.15 per ton during the period from April 1st to Sept. 1st, while for the remainder of the year, viz: from Sept. 1st to April 1st, it has been fixed at \$1.40 per ton.

As above noted there is an unvarying rate on all coal at all seasons of \$1.40 from the same mines to Memphis.

It is the custom with some, but not all of the southern railroads, to classify coal for transportation about as the Louisville & Nashville has done by the new arrangement above referred to, and to charge a somewhat higher rate on "screened coal" than on "run of mines, nut and slack."

Among the lines which do this are the Norfolk & Western, the East Tennessee, Virginia & Georgia, the Georgia Pacific and the Newport News and Mississippi Valley.

Among the lines which make no difference in the classification and rate, are the Cincinnati, New Orleans & Texas Pacific and the Chesapeake & Ohio.

The Louisville & Nashville, not only makes this difference in classification between "screened coal" and the other kinds, but on the "screened coal" it makes the rates vary with the season—that is, from April to August inclusive the rate is \$1.15 and from September to March inclusive the rate is \$1.40—while on other varieties it is \$1.00 the year round. This varying of the rates with the seasons is not generally customary on other roads, and on the Louisville & Nashville it applies only on the rate to Nashville.

Concerning the practice formerly prevailing at Nashville,

where the railroad company exercised the exclusive power of determining upon the persons to whom the so-called "manufacturers' rate" should be given, it need only now be said that it seems to have been a clear violation of the Act, and would have been forbidden by the Commission, had not the carrier abandoned it.

But the question still remains whether the present adjustment of rates, is a violation of law, as operating either an unjust discrimination, between Memphis and Nashville, or an unjust discrimination between different consumers in Nashville; or as establishing an unreasonably high rate on "screened coal" to Nashville—especially during the winter season.

The Commercial Club of Nashville, in a memorial addressed to the Commission, most earnestly protests that the new arrangement of the coal rates to that city has not really removed the discrimination complained of, and that no substantial benefit will result to the city therefrom.

The question of the probable effect of the change on the general interests of the citizens and consumers of Nashville, has been argued on the other side, by the Louisville & Nashville R. R. Co. in a reply to the memorial above referred to, and the claim is therein made with great earnestness and some degree of plausibility that upon the showing in the memorial and upon figures given therein a very considerable saving would result to the consumers of coal at Nashville by the new arrangement. In the record however there is no sufficient evidence as to the quantity and kinds of coal used at Nashville nor any proof of specific facts to justify a conclusion as to this matter, but upon the estimates given by the disputants it seems probable that considerable saving would result to the consumer by the new rates.

And there is this great improvement in the present adjustment over the old, that the present does not involve the arbitrary discrimination between different customers in the city that the former adjustment did.

As between Memphis and Nashville, considering the respective distance of those cities from the mines in western Kentucky, the rate of \$1.00 per ton to Nashville, does not seem to be low compared to the \$1.40 rate to Memphis. And



notwithstanding the argument that the rates to Memphis are forced down to that figure by water competition, this significant fact cannot be ignored: that the N. & L. railroad has for a number of years past been, and still is, buying coal at the western Kentucky mines, hauling it to Memphis and selling it there. There must be profit to the railroad company somewhere in the transaction and from the statements made as to the very low price of coal in Memphis as compared with the price (or cost of production) at the mines, it would seem that the profit is in the transportation.

It thus appears that the rate to Memphis is a remunerative rate to the carrier and that it is not an unreasonably low rate.

This being the case, the rate of \$1.00 per ton from the same mines to Nashville would seem to be not at all unreasonably low to the carrier. It is an average rate of about one cent per ton per mile, as against a rate of a little over one-half a cent per ton per mile to Memphis.

The circumstances at Memphis may, perhaps, make it difficult to make a difference between the charges for hauling "screened coal" and "run of mines, nut and slack" to that place. And in view of the incidental testimony in this case as to the value of the different kinds of coal, and of the custom prevalent among some roads of classifying "screened coal" higher than the other kind, and charging more for hauling it, it cannot with confidence be said that a difference in the rate to Nashville on the different kinds is not justified.

The amount of the difference made at the different seasons of the year, cannot, however, be justified either by the evidence in this case or by the custom of other roads. Indeed, the practice of making such a difference is confined on the L. & N. road to Nashville alone, and there seems no good reason why the practice should longer exist.

A difference of 15 cents per ton between the rate on "screened coal" and that on other kinds would seem to be sufficient at any season of the year. A greater difference than that is unreasonable.

The rate should be so arranged that while Memphis is getting a rate as low as \$1.40, Nashville should have a rate from



the same mines of not more than \$1.00 on "run of mines, nut and slack," and not more than \$1.15 on "screened coal" at any season.

It is therefore ordered that from and after this date, so long as the rate charged by the Louisville & Nashville Railroad Co. for the transportation of coal of any kind or class, from the mines on its Henderson and Owensboro divisions, in the State of Kentucky, to Memphis, shall not exceed the amount of \$1.40 per ton, the rate charged by the said company for the transportation from said mines to Nashville, of coal classed as "run of mines, nut and slack," shall not at any time exceed the amount of \$1.00 per ton, and the rate charged by said company for the transportation from said mines to Nashville of coal classed as "screened coal" shall not at any time exceed the amount of \$1.15 per ton. And any reduction made by the Louisville & Nashville Railroad Co. in the rate for the transportation of coal of any kind or class from said mines to Memphis, shall be accompanied by a proportionate reduction in the rates charged for the transportation of "run of mines, nut and slack" coal and of "screened coal," respectively, from said mines to Nashville.

And the Louisville & Nashville Railroad Co. is hereby ordered to conform its schedules of rates, fares and charges to this order, as required by law, and is ordered to cease and desist from publishing, posting, or putting into effect or from charging, demanding, collecting or receiving for the transportation of coal from the mines on its Henderson and Owensboro divisions, in the State of Kentucky, to Nashville, any greater rates than those hereby allowed and provided for.

**THE MERCHANTS' UNION OF SPOKANE FALLS V.  
THE NORTHERN PACIFIC RAILROAD COMPANY  
AND THE UNION PACIFIC RAILWAY COMPANY.**

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Complaint filed April 2, 1889.—Answers filed April 24, 1889, and May, 4, 1891.  
—Hearings had May 27, 28, 29 and 30, and June 4, 1891.—Briefs filed  
August 4, 1891, to January 11, 1892.—Decided November 28, 1892.

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1. Transportation by rail from eastern points to the "Pacific Coast Terminals," Portland, Tacoma and Seattle, is affected by the competition, of controlling force and in respect to traffic important in amount, of water carriers reaching the same terminals, but such competition does not affect like transportation from said points to the city of Spokane, Washington: *held*, therefore, that defendants are justified, by reason of such dissimilarity in circumstances and conditions, in maintaining higher rates on shipments of like property from said points for the shorter distance to Spokane than for the longer distance to said Pacific terminals. The competitive position and attitude of the Canadian Pacific Railway, a foreign carrier, considered in connection with existing water competition, but the separate effect of competition by the Canadian route not found or determined.
2. Class rates in effect upon the defendant lines and the lower commodity rates to their Pacific terminals examined and discussed: *held*, that the only justification for a through rate less than an intermediate rate on the same article is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt there is no ground upon which the lower through charge can be excused. No article should be carried to terminal points on commodity rates, which, if the class rates were imposed would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article.
3. In the matter of carload and mixed carload rates, minimum weight of shipments entitled to carload rates, and in all other respects, defendants are required to provide for and allow the same privileges, facilities and advantages on shipments to Spokane as are provided or allowed on like shipments to Portland or other Pacific coast terminals.
4. "Blanket" class rates applying upon the Northern Pacific road for a distance of over five hundred and eighty miles found relatively unreasonable: *also held*, that rates to Spokane, the principal distributing center to which such blanket rates apply, are unreasonable in themselves. Defendants ordered to cease and desist from charging rates on property

from eastern points to Spokane which materially exceed 82 per cent. of class rates now in effect both to Spokane and Pacific coast terminals. Provision made for reopening the case if necessary, and bringing in other carriers who may be affected by the order.

5. The Northern Pacific Railroad Company, notwithstanding certain provisions in its charter, is subject, like all other interstate carriers, to the authority conferred by Congress in the Act to regulate commerce. Citing and affirming *Raworth v. Northern Pac. R. Co.* 3 Inters. Com. Rep. 857, 5 I. C. C. Rep. 257.

*Turner, Forster & Turner* and *H. E. Houghton* for Complainant.  
*J. H. Mitchell, Jr.*, and *James McNaught* for Nor. Pac. R.R.Co.  
*John M. Thurston*, for Union Pacific Ry. Co.

### REPORT AND OPINION OF THE COMMISSION.

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#### KNAPP, Commissioner :

The charges investigated in this proceeding, which are mainly directed against the Northern Pacific Railroad Company, are summarized in the brief of complainant's counsel as follows :

First: That the rates charged on all classes of freight to Spokane Falls are unreasonable.

Second: That freight rates are so adjusted with reference to competing points, to wit: Portland, Tacoma, Seattle, Ellensburg and Missoula, as to constitute the same an unreasonable discrimination against Spokane Falls and in favor of said competing points.

Third: That a greater rate is charged to Spokane Falls for the transportation of property from eastern terminals than is charged to Portland, Tacoma and Seattle for like kinds of property under substantially similar circumstances and conditions ; all the said points being on the line of the Northern Pacific Railway, Spokane being more than 550 miles east of Portland and more than 400 east of Tacoma and Seattle, and being included in the haul from eastern terminals to said Portland, Tacoma and Seattle

In the complaint on file these general charges are set forth in numerous allegations relating to the location and commercial importance of the city of Spokane, with many illustrations of the disparity in rates on west-bound shipments between Spokane and the several towns above-mentioned, all tending to show the resulting disadvantage and injustice to the locality in whose behalf this proceeding is instituted. The relief sought by the complainant is such a reduction of the rates now exacted at Spokane as will make the same fair and reasonable; a readjustment of existing tariffs so as to prevent undue advantage to towns competing with Spokane in the territory alleged to be tributary to the latter place, and the enforcement of the prohibitory rule of the fourth section of the Act to regulate commerce, except so far as, in the judgment of this Commission, departure therefrom may be justified by the competition of the Canadian Pacific Railroad.

The answer of the Northern Pacific Company, so far as it need be referred to in this connection, bases resistance to this application upon two propositions. In the first place it denies that the charges now imposed upon traffic from eastern terminals to Spokane are in any respect excessive or unreasonable, and alleges that no unlawful discrimination against that town can be predicated upon the relatively lower rates accorded to Portland, Tacoma and Seattle, because the circumstances and conditions attending the transportation to those localities are greatly dissimilar. It avers, in the second place, that these lower rates on through shipments from the east to its several terminals on the Pacific are forced upon this defendant by the competition of ocean carriers reaching the same points from various Atlantic ports, and other ports on the Pacific coast, and by the Canadian Pacific railroad, none of which are subject to the Act to regulate commerce. The nature and extent of this competition, and its consequent influence upon the trans-continental rates of this defendant, was a controverted question of fact to which much of the testimony was directed.

A third defense, not disclosed or suggested by the answer, is strenuously urged upon our attention in the brief filed by counsel for the Northern Pacific Company. It is insisted, in effect, that the transportation charges of this carrier are not

subject to reduction or regulation by the Interstate Commerce Commission, because its charter, granted by special Act of Congress, vests in its board of directors the final and conclusive power, free from legislative control, of determining the compensation which its services shall receive, except those performed for the general government.

The facts disclosed by the investigation which are deemed material, and upon which we base the conclusions of this report, are found and stated as follows :

### FINDINGS OF FACT.

1. The complainant in this proceeding represents the city of Spokane in the state of Washington. It is a voluntary association of merchants and business men, organized, among other purposes, to secure equal and reasonable rates for railroad transportation to and from that city. Originally this town was known by the name of Spokane Falls, and that continued to be its designation until sometime after this complaint was filed. Prior to the hearing, however, the corporate name had been changed by dropping the word "Falls," and the name of Spokane, therefor, will be hereafter used in this report. When this proceeding was commenced, which was in March, 1889, the Northern Pacific was the only railroad reaching Spokane, and accordingly, that carrier was the sole defendant named in the petition. In October of that year the Union Pacific completed a branch road which connected Spokane with its main line at Pendleton, Oregon, a distance of 251 miles, and thereupon became a competitor for the carrying trade of Spokane. It has, however, at all times made the same rates as the Northern Pacific on Spokane traffic, and the two roads appear to be united in maintaining the rates of which that town complains. In view of its obvious interest in the controversy arising upon this complaint, the Commission of its own motion made an order, April 21st, 1891, allowing the Union Pacific Company to intervene as a party to the proceeding. It did so within the time prescribed by adopting substantially the answer which had previously been filed by the original defendant. The hearing took place, mainly at Spokane, in

May, 1891, and the case was submitted without oral argument, briefs being thereafter filed by the respective counsel. Both defendants are common carriers engaged in the transportation of interstate commerce.

2. The Northern Pacific Railroad Company was chartered by Act of Congress approved July 2d, 1864, and subsequently re-organized under the provisions of another Act approved September 29th, 1875. It owns and operates a line of railway for the transportation of freight and passengers from Ashland, Wis. to Portland, Ore. and Wallula, Wash. a distance of 2,137 miles. Its principal eastern termini are the cities of St. Paul, Minneapolis and Duluth in the state of Minnesota; and its principal western termini the city of Portland on the Willamette river in the state of Oregon, and the cities of Tacoma and Seattle on Puget sound in the state of Washington. It also owns or controls numerous tributary and branch lines, some of which are of considerable length and importance, those in the territory surrounding Spokane being the Central Washington Railroad, the Spokane & Palouse Railway, and the Spokane Falls & Idaho Railroad. The aggregate mileage operated by this company exceeds 4,500 miles. The city of Spokane is in eastern Washington, on the main line of the Northern Pacific, 1,512 miles west of St. Paul and 544 miles east of Portland. The distance from Spokane to Tacoma is about 400 miles and to Seattle 440 miles.

3. The Union Pacific Railway Company was also chartered by special Act of Congress approved July 1st, 1862, and numerous acts subsequent to that date have enlarged its corporate powers. Its main line extends from Council Bluffs, Iowa, to Ogden, Utah, a distance of 1,033 miles. At Ogden it connects with the Southern Pacific system, forming a trans-continental line to San Francisco and other points on the Pacific coast. It also controls or operates various roads extending from Ogden, and also from Granger, Wyoming, on its main line to Portland, Oregon, with branch lines diverging at different points, the whole constituting, in conjunction with the main stem and its connections, a trans-continental system of great magnitude. Among these branch lines is the one from

Pendleton to Spokane above mentioned, and one from Pocatello, Idaho, to Helena, Montana, which latter place is also on the main line of the Northern Pacific about 1,130 miles west of St. Paul. The distance from Chicago to Portland by the Union Pacific appears to be some 200 miles less than by the Northern Pacific, but the former reaches Spokane by a much more circuitous route than the latter, the Northern Pacific having the shorter line between Chicago and Spokane by more than 400 miles. The difference in distance from St. Paul to Spokane in favor of the Northern Pacific is still greater.

4. Spokane is by far the largest and most important town in eastern Washington. It is situated at the falls of the Spokane river which afford a natural water power of great volume and value. When the Northern Pacific road was completed to this point in 1881, it had but a few hundred inhabitants and a limited retail business. Its growth since that time has been so rapid and substantial as to attract widespread attention and justify expectations of great prosperity in the future. At the time of the hearing its population had increased to twenty thousand or more, and its business had expanded into large proportions. More than three and a half million of dollars were shown to be invested in the various branches of its wholesale trade, and it exhibited many indications of great activity and enterprise. Its location is fortunate and its natural advantages superior. It appears to be the commercial center of a large district into which railroads have already been constructed in several directions. It is separated from the towns with which it seeks to compete, both on the east and on the west, by mountain ranges over which railroad construction is difficult and costly, and where operating expenses must necessarily be large. Its nearest tide-water rival is four hundred miles away, and included in that distance are the long and heavy grades by which the Northern Pacific crosses the barrier of the Cascades. Within convenient reach are numerous mining regions and an agricultural country of great extent and high degree of fertility. About seventy-five miles to the southeast are the Coeur d'Alene mines, with a population of about five thousand, connected with Spokane by a railroad operated by the Northern Pacific. Less than ninety



miles east on the main line of that company are the Pend d' Oreille mines supporting some three thousand persons. To the northeast are the Kootenai mines in British Columbia, reached *via* Hope on said main line eighty-five miles east of Spokane and supporting some two thousand inhabitants. The Salmon river mines, with a population of five thousand, are about one hundred and fifty miles northwesterly, and between lies a fertile farming region, called the "Big Bend Country," situated on a bend of the Columbia river, and already occupied by upwards of fifteen thousand persons. Southerly and southwesterly is the "Palouse Country," so called, with an area of some twelve thousand square miles, peculiarly adapted to wheat raising, and containing an estimated population of forty thousand. Into this district runs the Spokane & Palouse railroad operated by the Northern Pacific. In various directions within a radius of one hundred and fifty miles are numerous towns and villages surrounded by farming communities, or supported by mining and kindred industries. The advantages of soil and climate, and the attractions of great mineral resources, have already brought to eastern Washington a large and enterprising population, and there is every reason to believe that its further development in wealth and numbers will be rapid and permanent. The natural location of Spokane, and the transportation facilities afforded by the various railroads which converge at that point, indicate that it is the appropriate and destined center for the distribution of an extensive and steadily increasing traffic through a large territory of consumers. These facts are stated at this length because they bear, quite forcefully we believe, upon the measure of compensation which public carriers may justly receive for services rendered to a community so situated and having such important relations to a large portion of this state.

5. The chief competitors of Spokane for the distributing trade of eastern Washington are the western terminals of the Northern Pacific, Portland, Tacoma and Seattle, all situated on navigable waters connected with the Pacific Ocean, and the interior towns of Ellensburg in Washington, Genessee in Idaho and Missoula in Montana. Portland is on the Willamette river a few miles above its junction with the Columbia and



about one hundred and thirty miles from the sea. It is the principal city on the Pacific coast north of San Francisco, of large wealth and commercial importance, and a population of nearly seventy thousand. Until within a comparatively few years it enjoyed almost a monopoly of the wholesale trade in the territory now comprising the states of Oregon, Washington and Idaho, and its jobbing business at the present time is said to exceed \$175,000,000 a year, one fourth of which is in eastern Washington. It reaches the Palouse country, some 400 miles distant, by an independent railroad, and its trade now extends to the towns and villages on the lines of the Northern Pacific as far east as Spokane. The rail rates obtained by Portland on through shipments from the east are so much lower than those accorded to Spokane that Portland dealers can lay down their merchandise in the territory immediately surrounding Spokane at prices which Spokane wholesalers cannot profitably meet. Indeed, it appears from the testimony that Portland merchants, and possibly those of Tacoma and Seattle also, actually compete on some lines of goods for the trade of Spokane itself. In consequence of this disparity in rates the wholesale business of Spokane is necessarily confined to a limited area, and its distributing trade kept within small dimensions. Where the cost of transportation forms in any event so large a part of the selling price of an article, the difference in rates between Spokane and Portland is great enough to give the latter the command of the market even in territory naturally tributary to the former. When the local rate from Spokane is added to the higher rate to that point, it is obvious that the Spokane dealer cannot successfully extend his business to any considerable distance in the direction of Portland. So long as the present co-relation of rates between these towns is maintained, Spokane will be practically debarred from competing for trade in the territory bordering it on the west, even that lying at its doors, and its development as a distributing center to that extent prevented.

The competition of Tacoma and Seattle is similar in character to that of Portland, and so also is its effect. Both these cities are situated on Puget sound, and have the advantage of water communication with the seaports of the world. They

have grown with great rapidity in recent years, Tacoma having upwards of 36,000 inhabitants and Seattle several thousand more. Their through rates from the east are the same as Portland's, and each of them has built up an extensive trade in the surrounding country. Ellensburg lies nearer the Salmon river mining region and parts of the "big bend country" than Spokane, but is less accessible to those districts on account of the Columbia river and the physical conditions of the intervening country. Genesee is the southern terminus of the Spokane & Palouse railway, and engages to some extent in the business of supplying the district by which it is immediately surrounded. Neither of these towns, however, by reason of their population, railroad facilities or relatively lower rates of transportation, sustain any vital relation to the main controversy in this proceeding. Missoula is something over two hundred and fifty miles east of Spokane, on the main line of the Northern Pacific, and competes with the latter place more or less successfully in the territory lying between them. Freight rates from the east are considerably lower to Missoula than to Spokane in proportion to their respective distances from eastern points of shipment, and the alleged disadvantage to which Spokane is thereby subjected is one of the grievances of which that town complains. The population of Missoula is stated to be about thirty-five hundred, and it is a station of considerable importance in the adjustment of rates affecting Spokane.

6. The Freight rates investigated in this proceeding are made by the Northern Pacific Railroad and the Trans-Continental Association, of which both defendants are members. A clear understanding of the principal question in this case will be aided by some explanation of the general method pursued in constructing the tariffs of this association, and a statement of the territory to which they apply.

The Trans-Continental Association, as we understand, is composed of the following roads, viz: Atchison, Topeka & Santa Fe; Atlantic & Pacific; Burlington & Missouri river; Canadian Pacific; Chicago, Rock Island & Pacific (West of Missouri river); Colorado Midland; Denver & Rio Grande; Great Northern; Missouri Pacific; Northern Pacific; Oregon

& California; Rio Grande Western; Southern California; Southern Pacific; St. Louis & San Francisco; Texas & Pacific, and Union Pacific. The territory covered by this Association, over which rates are made, includes, on the one hand, common points east of the 97th meridian of longitude located on roads of the Association, and points east thereof on roads with which the Association has an agreed basis for dividing rates, and on the other "Pacific Coast Terminals" and "Intermediate Points."

The Pacific Coast Terminals are the following: San Francisco, Sacramento, Marysville, Stockton, San Jose, Oakland (16th St.), Los Angeles and San Diego, in the state of California. Portland, East Portland, Albina and Astoria in Oregon. Tacoma, Seattle, Port Townsend, Olympia, Anacortes, Fair Haven, New Whatcom, Edmonds, Everett, Blaine and Quartermaster Harbor in Washington. Vancouver, Victoria, Nanaimo, Ladner's Landing and New Westminster in British Columbia.

Intermediate points are described in the tariffs of the Association as follows: "Intermediate points are points located on roads of this Association on direct line over which traffic passes in reaching any of the following "Terminals" viz:

(1) "San Francisco, Sacramento, Marysville, Stockton, San Jose, and Oakland (16th St.), California, when routed *via* any of the lines members of this Association, except the Canadian Pacific Ry.;

(2) "Los Angeles and San Diego, Cal. when routed *via* any of the lines members of this Association, except the Canadian Pacific Ry., the Northern Pacific R. R. or the line of the Union Pacific System *via* Huntington and East Portland.

(3) "Portland, East Portland and Albina, Ore., when routed *via* the Canadian Pacific Ry. Northern Pacific R. R. or Union Pacific System; and *via* Ogden, Roseville Junction, El Paso, Nojave, and the Mt. Shasta route;

(4) "Astoria, Ore. when routed *via* the Canadian Pacific Ry. Northern Pacific R. R. or Union Pacific System only.

(5) "Tacoma, Seattle, Port Townsend, Olympia, Anacortes, Fair Haven, New Whatcom, Edmonds, Everett, Blaine and Quartermaster Harbor, Wash.; Victoria, Nanaimo and Lad-

ner's Landing, B. C. *only* when routed *via* the Canadian Pacific Ry. Northern Pacific R. R. or Union Pacific Ry. and steamer from Portland, Ore.

(6) "Vancouver and New Westminster, B. C. *only* when routed *via* the Canadian Pacific Ry. or Northern Pacific R. R."

The region between the 97th meridian of longitude and the Atlantic seaboard is divided into six groups or territories, as follows :

Missouri River Common Points,  
Mississippi River Common Points,  
Chicago—Milwaukee and Common Points,  
Cincinnati—Detroit and Common Points,  
Pittsburgh—Buffalo and Common Points,  
New York, Boston, Philadelphia, Baltimore, and points  
common with each.

The tariffs of the Association give detailed descriptions of the boundaries of each of the above mentioned territories.

Theoretically, the various articles of traffic are divided into ten classes, designated by the numerals, 1, 2, 3, 4, 5, and the letters A, B, C, D and E; and each class ordinarily has a different rate between the same points. Upon all classified traffic carried under the tariffs of the Trans-Continental Association the Western Classification is applied. This classification is made by a committee representing the lines leading westward from Chicago and the Mississippi river, and governs all through and local traffic on such lines; but upon trans-continental business its application is extended to embrace shipments originating at the Atlantic seaboard.

The following table shows the present *class* rates between "Pacific Coast Terminals" and "Intermediate Points," and the six territories above described; east of the 97th meridian of longitude. These rates apply in both directions, and there have been no material changes in them since September 1, 1888.

Between “ Pacific Coast Terminals” and “ Intermediate Points.” —and—		Classes.									
		1	2	3	4	5	A	B	C	D	E
Missouri River Com. Pts.		350	300	250	200	175	175	155	125	110	100
Mississippi River Com. Pts.		370	320	260	205	180	182	163	130	115	105
Chicago, Milwaukee & Com. Pts.		390	340	270	210	185	190	170	135	120	110
Cincinnati, Detroit & Com. Pts.		395	345	275	215	190	195	175	140	125	115
Pittsburgh, Buffalo & Com. Pts.		400	350	280	220	195	195	175	140	125	115
N. Y., Bos., Phil. Bal. & Com. Pts.		420	370	295	230	200	200	180	145	130	120

Spokane is an “ Intermediate Point ” within the definition of that phrase in the tariffs of the Association, and takes the same class rates as the above mentioned “ Terminals.”

Rates to and from San Francisco *via* Canadian Pacific Railway are the following differentials lower than the rates shown above :

	Classes									
	1	2	3	4	5	A	B	C	D	E
St. Paul & Minneapolis	15	12	10	10	10	8	8	7	5	5
Chicago, Milwaukee & Com. Pts.	17½	14½	12	10	10	8	8	7	5	5
Cincinnati, Detroit & Com. Pts.	21	17	14	11	11	9	9	7	5	5
Pittsburgh, Buffalo & Com. Pts.	22	18	15	12	12	10½	10½	8	7	5
N. Y., Bos., Phil., Bal. & Com. Pts.	28	24	17	14	14	12	12	8	8	5

Besides these class rates there are a large number of *special commodity rates* both east and west bound. The commodity rates applying west bound, however, are largely in excess of those applying east bound. In the west bound tariffs as now printed there are about three pages of commodity rates applying to both “ Pacific Coast Terminals ” and “ Intermediate Points,” and more than fifty pages applying to “ Terminal ” points only. The latter list probably includes the greater portion of articles which are shipped from points east of the 97th meridian to Pacific Coast points. When a commodity rate to a “ Terminal ” point plus the local back to an “ Intermediate ” point makes a lower rate than the straight “ Intermediate ” rate, the combination rate applies

The rates upon classified traffic to Pacific coast points are the maximum rates to intermediate points.

It will be observed that the roads which are members of the Trans-Continental Association extend no further east than the Mississippi river, while rates are published by the Association from the various eastern grouped territories described. Under the present plan of co-operation with lines east of the Missis-

Mississippi river, tariffs are promulgated by the Trans-Continental Association only after concurrence in the rates by the lines east of the Mississippi through their associations, under which arrangement the eastern lines exact certain proportional rates to the Mississippi river.

The rates from St. Paul to Spokane are made and published by the Northern Pacific Railroad. These rates are progressive until a point is reached where the rate is found to be as high as the class rate to Pacific coast terminals; from such point to the coast the terminal rate is applied under the rule that the rate to the Pacific coast shall be the maximum rate to intermediate points, except when a commodity rate to a "terminal" point plus the local back to an "intermediate" point under the classification produces a lower rate than the straight "intermediate" rate.

As the tariffs are now arranged the maximum class rate is reached at Athol, Idaho, forty-two miles east of Spokane, and continued from there west to Portland, a distance of 586 miles. No group of points receiving the same rates embracing anything like so great a distance is observed on any other portion of the road. The next largest group, West End, Montana, to Garrison, Montana, inclusive, covers only 160 miles.

7. The class rates to Spokane on the several classes of freight from eastern terminals of the Northern Pacific are as follows:

Merchandise in cents per 100 lbs.

1	2	3	4
<u>350</u>	300	<u>250</u>	200

Special carload classes in cents per 100 lbs.

Fifth Class	A	B	C	D	E
175	<u>175</u>	<u>155</u>	<u>125</u>	<u>110</u>	<u>90</u>

All stations west of Spokane to and including Portland, *via* Tacoma, and all stations on the Spokane and Palouse road, are grouped with Spokane and charged the same rates. As a general rule commodity rates are made to terminal points, and classification and local rates to intermediate points. Ellensburg freight appears to be billed through to Tacoma and returned at local east bound rates.

The great bulk of shipments from eastern points to Spokane is charged the class rates above given, while most of the traffic

to Portland and other western terminals is taken at commodity rates, as already stated. In the printed Tariffs Spokane has only two or three pages of articles bearing commodity rates against upwards of fifty pages applying to Portland.

The following table exhibits the class rates and distances from St. Paul to the various stations therein named, with the rates per ton per mile on first class freight to each such station, from which may be seen the increased rate per hundred pounds compared with increased distance from starting point.

Miles from St. Paul	Stations.	Rates per ton per mile 1st class.	Per hundred pounds.									
			1	2	3	4	5	A	B	C	D	E
231	Hitterdal, Minn....	06.57	77	65	50	39	31	31	27	23	19	15
251	Fargo, N. D.....	06.37	80	68	52	40	32	32	28	24	20	16
486	Sims, N. D.....	05.35	130	109	90	78	66	54	48	41	37	30
744	Miles City, Mont...	04.57	170	144	124	107	94	84	74	65	57	47
1007	Livingston, Mont..	04.66	235	205	165	140	120	105	88	78	68	58
1130	Helena, Mont.....	04.42	250	215	175	145	125	110	92	82	72	62
1254	Missoula, Mont....	04.15	260	225	185	155	135	120	102	87	77	67
1512	Spokane, Wash...	04.63	350	300	250	200	175	175	155	125	110	90
2056	Portland, Oregon,.	03.40	350	300	250	200	175	175	155	125	110	100

The following deductions from this table show the increase in first class rates between different points at substantially equal distances from each other between St. Paul and Spokane.

Hitterdal.....	231	miles from St. Paul.....	77 cents.
Sims.....	255	“ “ Hitterdal.....	53 “
Miles City .....	258	“ “ Sims.....	40 “
Livingston.....	263	“ “ Miles City.....	65 “
Missoula.....	247	“ “ Livingston .....	25 “
Spokane .....	258	“ “ Missoula .....	90 “

The increase on the other nine classes is in approximately the same proportion.

These tables show an extraordinary increase from Missoula to Spokane. Figured in cents per ton per mile, the increase on through freight from the east to Spokane and Missoula respectively, *for the 250 miles east of each place*, is approximately as follows:

First class.....	(Spokane, 7½ cents. Missoula, 2 “
Fifth class.....	(Spokane, 3½ “ Missoula, 1½ “
Class E.....	(Spokane, 2 “ Missoula, 7 mills,



The rates to Spokane and Missoula were originally on a similar progressive basis, but upon the construction of the Great Northern road to Missoula that town was granted a \$2.60 rate. While Missoula has proportionally lower rates on shipments from the east, its rates from San Francisco are but little higher than those to Spokane. On fifth class freight, for instance, rates from the east to Spokane are 40 cents higher than to Missoula, while the rates from Portland to Missoula are only ten cents higher than to Spokane. The highest rate on sugar going east is at Spokane, but on most other articles at Miles City, Montana. On east bound freight, Pacific coast products, Missoula is grouped with Spokane on certain commodity rates, and on classified traffic the increase from Spokane to Missoula is only about one third the increase on west bound freight from Missoula to Spokane.

The rate per ton per mile, St. Paul to Spokane, on each of the ten classes is approximately as follows: 1st,  $4\frac{6}{10}$  cents; 2d, 4 cents; 3d,  $3\frac{3}{10}$  cents; 4th,  $2\frac{6}{10}$  cents; 5th,  $2\frac{3}{10}$  cents; A,  $2\frac{3}{10}$  cents; B, 2 cents; C,  $1\frac{7}{10}$  cents; D,  $1\frac{5}{10}$  cents; E,  $1\frac{3}{10}$  cents.

The average, therefore, of the first five classes is about  $3\frac{1}{2}$  cents, and of all the classes  $2\frac{1}{2}$  cents. Assuming the average (commodity) rate to Portland to be \$1.50 per 100 lbs. the average rate per ton per mile would be about  $1\frac{4}{10}$  cents. On this assumption the rate per ton per mile from the east to Portland is less than three fifths as much as to Spokane, although the distance is more than one third greater. And if, as seems to be the fact, most of the goods shipped are in the first five classes, the disparity between these towns is still more marked. There is no point on the line of the Northern Pacific where west bound rates are higher than to Spokane, consequently western terminals pay no more than Spokane even on articles carried at classification rates, and notwithstanding such articles may not be adapted to water carriage or actually subject to water competition.

8. The freight tonnage carried to Spokane and the earnings derived therefrom, compared with corresponding figures relating to Portland, Tacoma, and Seattle, give some idea of the relative revenues obtained at these towns respectively.



The following statement furnished by the Northern Pacific Company, shows tonnage received and earnings therefrom at the several stations therein named for the year ending June 30, 1890.

Freight Received.		
Station.	Tonnage.	Earnings.
Spokane.....	182,018.....	\$1,664,905.48
Seattle.....	122,174.....	1,216,494.42
Tacoma.....	534,219.....	1,859,645.86
Portland.....	73,383.....	746,194.99
Tonnage given in tons of 2,000 lbs.		

The total number of tons handled by this company during the same year was 3,569,969, and the total freight earnings, \$15,600,319.22.

The following figures are for the eleven months ending May 31, 1891:

Freight Received.		
Station.	Tonnage.	Earnings.
Spokane.....	199,752,385.....	\$ 970,091.60
Seattle.....	295,642,502.....	1,261,959.17
Tacoma.....	1,424,075,167.....	2,068,119.82
Portland.....	195,347,991.....	871,825.15
Tonnage given in pounds.		

The freight shipped from these points during the same periods and the earnings therefrom appear from the following statements furnished by the same company:

Freight Forwarded.		
Station.	Tonnage.	Earnings.
Spokane.....	48,809.....	\$163,848.52
Seattle.....	19,371.....	110,862.97
Tacoma....	84,404.....	457,789.44
Portland,.....	118,066.....	586,451.14
Tonnage given in tons of 2,000 lbs.		

Freight Forwarded.		
Station.	Tonnage.	Earnings.
Spokane.....	92,602,738.....	\$203,044.52
Seattle.....	66,446,802.....	156,305.58
Tacoma.....	192,247,775.....	509,847.16
Portland.....	241,692,675.....	711,250.54
Tonnage given in pounds.		

The foregoing figures include all the business of the Northern Pacific, both through and local, at the places and during the periods named, but the division of that business between through and local at either point cannot be determined from the evidence. Of the aggregate earnings of this company from its whole mileage, about 26 per cent. is received at terminal

and 74 per cent. at intermediate points. Mr. Hannaford, the General Traffic Manager of this road, testified in substance that 60,000 tons a year was a moderate estimate of the traffic to Spokane from St. Paul and points further east, but the tonnage of such traffic to Pacific coast terminals, or either of them, does not appear. Neither do the proofs show how the through shipments to Spokane are divided between the different classes of freight, nor the relative tonnage of different articles taken at commodity rates to the several terminals. There may be some estimates upon these points but no accurate and reliable figures. The information, however, is of no special value. The main question upon this branch of the case grows out of the rates themselves in connection with the distances and other related facts which distinctly appear and are wholly undisputed.

Since the completion of its branch line from Pendleton, the Union Pacific has secured from ten to fifteen per cent. of the eastern traffic to Spokane, and probably handles about one fourth of the entire tonnage of that town. It does not appear to be in a situation to do otherwise than meet the rates made by the Northern Pacific.

The tonnage from east to west on the Northern Pacific is much greater than from west to east; consequently a large number of empty cars must be hauled in the latter direction. This feature of the business seems more prominent in respect to western terminals than points in eastern Washington, and this circumstance may have some bearing on the relatively higher rates from the coast to Spokane than to Missoula and more easterly points.

9. As already explained most of the traffic to Pacific terminals is carried, not at class rates, but at special commodity rates. The difference between the class rate and the commodity rate on any particular article is easily ascertainable from the tariffs, and the difference in revenue can be determined by multiplying the tonnage actually carried to terminal and intermediate points respectively by the respective rates to each. This difference will sufficiently appear, without entering into numerous calculations, by the following illustrations, taken at random from the tariff sheets, and showing the rates actually

charged on shipments from the east to the several points named, on a number of articles of general consumption, the traffic in which is presumably large. It will be remembered that Tacoma, Seattle and other terminal points take the same rate as Portland.

*Statement showing rate per 100 lbs. on the several commodities named from St. Paul to the points given.*

Rates from Missoula, Spokane and Genessee are local class rates of the Northern Pacific R. R. from St. Paul.

Rates to Ellensburgh are constructed upon a combination of the commodity rate to Portland and the class rate Portland to Ellensburgh.

Rates to Portland are the commodity rates to "Terminal" points as per Trans-Continental Association Tariffs.

Class	Commodity.	Mis- soula.	Spok- ane.	Genes- see.	Ellens- burgh.	Port- land.
5	Canned Goods, C. L. ....	135	175	175	162	107
3	Coffee, roasted, L. C. L. ....	185	250	250	250	176
1	Calicos, etc., L. C. L. ....	260	350	350	294	189
2	Crockery and Earthenware, L.C.L.	225	300	300	242	149
5	Iron Bolts and Nuts, C, L. ....	135	175	175	160	105
3	Paper Bags, L. C. L. ....	185	250	250	224	149
5	Stoves, Ranges, etc., C. L. ....	135	175	175	172	117
4	Tin Plate, L. C. L. ....	155	200	200	196	131
A	Farm Wagons, C. L. ....	120	175	175	163	113
5	Nails, C. L. ....	135	175	175	154	99
1	Table Sauce, L. C. L. ....	260	350	350	276	171
2	Twine (Harvesting) L. C. L. ....	225	300	300	242	149
3	Baking Powder, L. C. L. ....	185	250	250	246	171
1	Brooms, L. C. L. ....	260	350	350	294	189
4	Candles, C. L. ....	155	200	200	172	107
2	Cordage, L. C. L. ....	225	300	300	282	189
3	Currants (Dried) L. C. L. ....	185	250	250	250	220
1	Ink, in Glass, L. C. L. ....	260	350	350	254	149
5	Soap, C. L. ....	135	175	175	154	99
5	Syrups, C. L. ....	135	175	175	162	107
1	Staple Woodenware, L. C. L. ....	260	350	350	294	189
1	Bulky Woodenware, L. C. L. ....	260	350	350	350	270
1	Woodenware, notions, L. C. L. ....	260	350	350	287	216

These examples, it is believed, fairly characterize the entire list of commodities, and indicate the general relation of rates between Spokane and the other points named in the table. A simple computation shows that the average rate per 100 pounds on the twenty-three articles or classes of merchandise above mentioned is \$2.60 to Spokane and Genessee, \$1.94 to Missoula, \$2.29 to Ellensburgh, and \$1.54 to Portland. Substantially the same results would doubtless be obtained by a more

extended comparison. On the basis of these figures the rate per ton per mile is  $3\frac{43}{100}$  cents to Spokane as against  $1\frac{49}{100}$  cents to Portland. It is manifest from this showing that numerous articles of common consumption which are produced at various points in the east can be laid down at Portland, Tacoma or Seattle so much cheaper than at Spokane that the latter town is placed at constant and serious disadvantage.

10. We also find in a few instances differences in classification which favor these terminal points irrespective of their lower rates. On some articles car-load rates are made to Portland when no car-load rate is given to Spokane. In such a case the less than car-load rates apply to Spokane although the shipment is in car-load quantities, thus depriving Spokane of the advantage of Portland's car-load rate. The privilege of shipping mixed car-load lots at car-load rates is also allowed to Portland when the same privilege is denied to Spokane; and there appear to be some instances in which the car-load rate is granted to Portland on a shipment of 15,000 pounds, but not accorded to Spokane on a shipment under 20,000 pounds. The virtual admission of the defendants that such discriminations are unlawful, and their avowed intention of correcting all inequalities of this description, render it unnecessary to cite examples from the evidence or add further statement to this general finding.

11. The comparative volume of eastern traffic which actually reaches these Pacific terminals by water cannot with entire satisfaction be determined from the evidence. Special facts relating to particular shipments might be multiplied indefinitely, but their chief value would consist in furnishing instances of ocean carriage; while general statements, though leading more directly to correct conclusions, would doubtless be subject to modifying exceptions. The primary question, however, is not so much whether rail rates to the Pacific are lower than is necessary to prevent water carriers from doing the business, but whether in fact such competition exists at these western terminals as justifies the railroads in maintaining higher rates to intermediate points than are accepted by them for through transportation. The dissimilarity of conditions so substantial that the greater

for the lesser distance may be lawfully exacted? The fundamental fact observed in this connection is that all of these three towns, Portland, Tacoma and Seattle, possess the natural advantages of seaport location. They enjoy the benefits of water communication with the great supply markets of the world. The opportunity for receiving eastern shipments independent of the rail transportation furnished by the defendants is constantly afforded them. Through the navigable waters which connect them with the Pacific, sea-going vessels of ample size can bring merchandise from all quarters directly to their docks. In the nature of the case the railroads neither have nor can have a monopoly of the carrying trade to these towns, for the facilities of water carriage are always available to them. Having the choice of two methods they can employ the one which on the whole proves most economical. Under these circumstances the railroads must necessarily make rates low enough to secure the business or abandon it to rival carriers using the cheaper modes of water transportation. Prior to the construction of the trans-continental lines the great bulk of eastern merchandise consumed on the Pacific coast was conveyed to its destination in ocean vessels either around Cape Horn or by the Isthmus of Panama. This resulted in an established commerce by those routes between Atlantic and Pacific ports. When the railroads were built they were able to participate in this trade only by offering rates which, all things considered, were more advantageous to shippers than those afforded by the water lines. That was the obvious condition upon which they could engage to any great extent in carrying freight to the Pacific coast. They had the alternative of making rates which would attract the business or leaving it mainly to the ocean carriers. But while the inducements held out by the railroads have given them a large portion of this through traffic, they have at no time secured it all. More or less has always gone by water, and a considerable share of it still follows the ocean routes notwithstanding the low rates offered by the overland lines.

The extension of railroad facilities to the Pacific coast caused a large addition to the population west of the Rocky mountains, and greatly stimulated the demands of that terri-

tory for eastern products. The volume of business rapidly increased and is all the while enlarging. The railroads, it would seem, are amply equipped for handling the entire traffic, but the ocean lines have not been discontinued. The cheaper cost of water transportation cannot be wholly overcome by the advantages of rail conveyance. Under the existing relation between land and water rates a certain amount of eastern freight will continue to reach the Pacific coast by ocean carriage, and the constant opportunity to employ that mode of shipment is an unyielding limitation upon the through charges of the railroad.

Nor is the quantity of merchandise which now goes by water to these western terminals by any means insignificant. A line of steam-ships between New York and San Francisco by the Isthmus of Panama dispatches a steamer of large tonnage every ten days and has done so for a number of years, and numerous sailing vessels take cargoes with more or less regularity from Atlantic and foreign ports to various distributing points on the Pacific coast. Several lines of steamers run from San Francisco to Portland and Puget Sound ports, one of them sending a vessel to the last named ports every five days, and two others every ten days. Between August, 1888 and April, 1889, nineteen ships with merchandise cleared from New York for San Francisco and Portland, and during the twelve months ending in May 1891, eight loaded vessels entered the port of Portland sailing directly from the Atlantic coast. Clipper ships also make more or less frequent voyages from New York to Puget sound ports direct, bringing merchandise of various kinds to Tacoma and Seattle in competition with the overland roads. In addition to these are occasional vessels coming to those ports for return cargoes of lumber, wheat, etc. and willing to take outgoing freight in place of ballast at almost nominal figures. The eastern goods conveyed to these points by water are mostly of the coarser and cheaper grades, such as heavy hardware, groceries and commodities of a similar character; but they include, to some extent at least, such merchandise as school and blank books, ink, paper, certain kinds of drugs, foreign crockery, notions, and many other articles of general consumption. Part of this

traffic comes direct from the eastern port of shipment, and part of it is transshipped at San Francisco. In the aggregate it is quite moderate both in weight and value compared with the rail transportation to these terminals, probably not exceeding five per cent. of the total tonnage. The average time required for a voyage from New York around Cape Horn to Puget Sound ports is approximately five months, and this circumstance alone gives an enormous advantage to the carrier by rail. The great variation in the length of ocean voyages, uncertain and irregular arrivals of sailing vessels, increased liability to loss and damage while in transit, cost of marine insurance and long interval between date of shipment and arrival, with consequent loss of interest upon the purchase price, all operate against the general and constant use of water transportation for such unusual distances. Articles of a delicate or perishable nature will rarely take the ocean routes when any other method of conveyance is obtainable, while the great variety of goods which are adapted to a particular season or depend upon the fluctuations of fashion will, as a matter of course, seek the speedier movement and more certain delivery afforded by the overland lines. In favor of the ocean routes, however, are their constantly lower charges. Rates which would be ruinous to the railroads are freely offered by their competitors. The water carriers solicit traffic for transportation from the Atlantic seaboard to Pacific terminals at a cost to the shipper greatly below the commodity rates of these defendants. Shipments are made by the ocean lines at 50 to 75 cents per hundred on many lines of goods, and the average water rate appears to be not more than half the rail rate to the same points on the Pacific coast. Freight is sought for by agents of the water lines at \$10 per ton from New York to Seattle, and it seems to have been carried for less than \$9 per ton by steamer to Antwerp and thence by sailing vessel to Puget Sound.\* Between the lower rates offered by one carrier and

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\*To these facts which are established by the testimony in this case, it may not be improper to add that information subsequently acquired in other proceedings shows a much more extensive use of water transportation and much lower rates by water lines than are indicated by the foregoing statements. The actual course of business at the present time justifies the finding that water transportation, of merchandise adapted to that mode of conveyance, is practically available for shipments from the Atlantic seaboard to the Pacific terminals.



the greater speed, safety, etc., afforded by the other, the shipper can choose from time to time as interest seems to dictate. The opportunity for choice between competing modes of transportation, permanently enjoyed by these terminal towns, places them in a very different relation to the railroads than intermediate points not favored with a similar competition.

The investigation of this case satisfies us, and we so find, that under existing rates for land and water transportation respectively, the tendency is in the direction of increased shipments by the ocean routes. This is due in part to the improved facilities and diminished cost of water carriage, but still more to the enlarged business and greater financial strength of wholesale dealers on the Pacific coast. As these terminal points develop and their trade becomes more assured and important, the increase of capital will gradually remove the necessity for quick delivery and speedy sales of eastern purchases, while competition with each other will more and more compel resort to the cheaper modes of transportation.

Between the lowest charges of the rail carriers and the rates accepted by the water lines there is a wide margin in favor of the latter. So long as this margin exceeds the items of interest, insurance and the like, the ocean routes will attract the patronage of shippers whose financial condition leaves them at liberty to select the cheapest method of securing their supplies. While the rail tariffs in question remain so much above the water rates, it may be reasonably expected that staple goods required for general consumption at all seasons of the year, particularly the low-priced and heavy grades in which the traffic is extremely large, will, so far as they are fairly adapted to long distance transportation by water, very largely take that method of reaching their destination.

12. The commodity rates accepted by the defendants on shipments to their western terminals afford them a margin of profit over the cost of moving the traffic. Their net revenues are increased by engaging in this competitive business. Measured by the income which these roads are entitled to receive upon the large outlay required for their construction, their through rates are not remunerative. Their entire business could not be done on the same basis without financial disaster.



A certain revenue above operating expenses is necessary to their solvency and justified by the original investment. But such returns would not be realized if they were compelled to carry freight to all points on their lines at rates proportioned to their through charges, nor even if the intermediate rate in no case exceeded the present terminal rate. If the existing intermediate or class rates should be enforced on all shipments to the Pacific, a large portion of the through traffic would go to the ocean carriers and the railroads be mainly confined to the business of their local and interior points. It is quite suitable, therefore, for the defendants to make through rates which enable them to participate in this competitive traffic, provided the receipts therefrom clearly exceed the added risk and expense involved in handling the business. This we find to be the general fact in respect of the through rates in question.

#### CONCLUSIONS.

From the foregoing statement of our views respecting the principal questions of fact in this case, it follows that the complainants' petition cannot be sustained so far as it seeks to enforce the general rule of the statute prohibiting the greater charge for the lesser distance. The circumstances and conditions under which through transportation is effected over the lines of the Northern Pacific to its western terminals are substantially different from those attending like transportation to Spokane, such dissimilarity consisting in the competition at these terminal points of carriers not subject to the Act. To what extent this competition is created by the rates made and traffic secured by the Canadian Pacific road does not very clearly appear. The known facts concerning that road, however, are not wanting in significance. It is a foreign railroad, chartered and subsidized by a foreign government and not directly amenable to the regulating authority of Congress. It extends entirely across the continent at no great distance from our Northern border, and is so located and connected with domestic lines as to constitute a prominent factor in all questions of transportation between the eastern and western sections of the United States. The circumstance that this carrier is

allowed certain differentials by agreement of the trans-continental lines, presumably with the view of insuring stability of rates, plainly indicates its power to divert traffic from the American lines and the generally formidable character of its competition. How far the rivalry of the Canadian Pacific would excuse the defendants in making lower rates to terminal than to intermediate points, if no water competition existed at those terminals, we do not undertake to determine. Whatever opinion might be formed under such circumstances, it is manifest that the existing situation is modified in a considerable degree by the presence of this foreign railroad; that it exercises a distinct and appreciable influence upon the rates in question, and that it is not to be disregarded in estimating the obligations of the defendants to the various localities which they serve. In saying this, however no assumption is implied that the Canadian Pacific road is not subject to the Act to regulate commerce, as to this competitive traffic; the observations are made without reference to that question. This explanation is perhaps needful as nothing is intended to be here stated conflicting in any respect with our recent decision in the Georgia Railroad Commission cases. *Trummell v. Clyde SS. Co.* 4 Inters. Com. Rep. 120.

There is sharp disagreement between the parties both as to the kind and volume of shipments which actually reach these Pacific terminals by water, and as to the necessary effect of water carriage and water rates upon the proper adjustment of railroad charges. Without reviewing the evidence or repeating the findings upon that issue, we are constrained to hold that water competition of controlling force, and affecting a variety of traffic important in character and amount, actually exists at these several terminals, and that such competition, taken in connection with the competitive position and attitude of the Canadian Pacific road, justifies the defendants in accepting less compensation on eastern shipments to the cities of Portland, Tacoma and Seattle than they may lawfully charge on like shipments to the intermediate city of Spokane. The conditions attending transportation to the interior towns are radically different with respect of obtainable rates than those governing like transportation to the Pacific coast. The carrying

trade to Spokane is monopolized by the defendants, but the traffic to their various terminals is subject to constant and controlling competition. The ocean lines which reach these ports furnish independent and efficient facilities for the carriage of eastern merchandise, and offer their services at rates which the rail carriers must approximate or be mainly excluded from participation in the through business. Virtually in one case the railroads exact "what the traffic will bear," in the other they must carry for what they can get. The lower charge to competitive points is fairly excused by the necessities of the case.

While this conclusion is reached without serious difficulty, we have the impression at the same time that some of the commodity rates under which traffic is taken to western terminals are lower than is necessary to prevent water lines from getting the business, and that commodity rates are accorded to more or less articles which are not adapted to water transportation and therefore not subject to water competition. The only justification for a through rate less than the intermediate rate on the same article is the compulsion of the rail carriers to accept the reduced compensation or suffer their ocean rivals to perform the service. Where the pressure of this alternative is not felt there is no ground upon which the lower terminal charge can be excused. Nothing but the stress of unavoidable competition can legalize the inequality resulting from higher rates for shorter than for longer hauls. It is evident, therefore, that no article should be carried to terminal points at commodity rates, which if the class rates were imposed, would still seek rail rather than water transportation. Any violation of this rule is an unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article. Theoretically it would be suitable to examine the entire list of commodities with the view of ascertaining which of them in fact are practically adapted to ocean carriage, and to restrict the defendants in making lower terminal rates to such articles as are actually subject to water competition. Merchandise which would usually and naturally go by the overland lines, if the classified rates were enforced, should not be allowed the more favorable tariffs granted to strictly competitive business.

If that principle is regarded the discriminations complained of will be limited to traffic fairly capable of conveyance by either mode, and the rates in question equitably adjusted to the different conditions prevailing at terminal and intermediate points. Moreover, as it seems to us, the interests of the rail carriers themselves would be promoted and their revenues increased by adherence to this policy in regulating their charges. But the evidence upon this subject permits no such minute analysis of the situation and furnishes no basis for such detailed directions. Upon the facts before us we can do little more than decide the general question involved in this phase of the controversy and indicate the rule which, under that decision, should be rigidly applied in making lower rates to competitive terminals than may lawfully be maintained at shorter distance points where no other transportation is available than that furnished by the defendants. The principle of relative justice will not be observed if commodity tariffs are made needlessly low to prevent traffic from going by the ocean lines, nor if articles not really subject to water competition are given through carriage at commodity rates. Our impression that this rule is departed from in some cases may be erroneous, but even if well founded the correction of any injustice in this direction must await further investigation of the facts and circumstances relating to particular articles and the commodity rates at which they are carried.

It should be understood, therefore, that nothing contained in this report is intended to formally approve the present schedule of commodity rates to Pacific terminals either in detail or as a whole. We sustain the general contention of the defendants that competitive conditions existing at these terminals justify a departure from the rule which prohibits a higher charge for a shorter than for a longer haul, but we pass no judgment upon the necessity or propriety of any particular rate. All questions of that character are reserved for future inquiry. If specific cases of discrimination against interior shippers are alleged to result from these commodity rates, either because some article receives a rate clearly below the necessities of competition, or because the commodity rate is applied to an article not actually competitive, the Commission

will be at liberty within the spirit of this decision to investigate any complaint of that nature and make such correcting order as the facts may require.

Although we find justification for the defendants in maintaining higher rates on shipments to Spokane than they accept on like shipments to Portland and other Pacific terminals, we are at the same time clearly convinced that the rates now in force from St. Paul and eastern points to Spokane are in themselves unreasonable and should be considerably reduced. The conditions of water and rail competition at western terminals may compel these roads to make through rates less than those justly established at intermediate places, but the intermediate rate must itself be fair and reasonable. The Spokane rate does not meet this requirement; we are satisfied that it is excessive. It discriminates against those who are compelled to pay it, not because lower rates are granted to towns at greater distance from St. Paul, but because under all the circumstances it is unreasonably high; and our warrant for this conclusion is found in the published tariffs and long continued practices of the railroads themselves. In connection with other carriers they have promulgated and for years maintained certain class rates on traffic to Pacific terminals which are identical with their rates on shipments terminating at Spokane. Their standing proposition is to carry at these class rates to their several terminals regarded as noncompetitive points. In effect they say, we should charge these class rates and no more for transportation of all kinds to our Pacific terminals, if there was no competition for the carrying trade to those points, and we would be willing in the absence of such competition to perform the service for that compensation. This is equivalent to a declaration on their part that the class rates afford reasonable and adequate remuneration for hauling traffic to the Pacific coast. They profess now to charge the class rates on all articles not suited to water carriage and for that reason not subject to water competition, and they excuse the lower commodity rates, on through shipments solely on the ground of such competition. They must be deemed to admit, therefore, that only the present class rates would be expected for carrying to their various terminals if those terminals were noncompetitive

points under similar conditions to those existing at Spokane. In short the class rate is concededly fair compensation for through carriage to the Pacific. But if the class rate is reasonable and compensatory for carrying to Portland, must not the same rate for carrying only to Spokane be excessive and unreasonable? If that rate sufficiently rewards the carrier for the greater service, is not the lesser service clearly overpaid? Bearing in mind the great difference in the distances of these towns from eastern points, and the difficult grades over the intervening Cascades, a rate which is admitted to be enough for the longer haul would seem little less than extortionate for the shorter. There can be no justification for applying the same tariffs to places so far apart as these, with a range of mountains between them, when rates are made without reference to competitive conditions at the longer distance point. The scheme of tariff construction by which uniform charges are made to all points between the eastern line of Washington and the city of Portland, a distance of more than five hundred and sixty miles, carries on its face the presumption of injustice. A "blanket" of such extraordinary dimensions must cover a multitude of transportation sins.

Moreover, the great disparity in this case between through and intermediate rates tends strongly to prove the unreasonableness of the latter. The Northern Pacific would not be competing for terminal business at these low commodity rates if they did not yield a margin of profit over the cost of performing the service. Granted that those rates applied to all the traffic of this company would not produce the revenue to which it is entitled—and we have so found—nevertheless the earnings on competitive business exceed the additional expense incurred in its transportation. Something, the carrier asserts, is made on this traffic over the cost of "physical movement." That is the fact relied upon to excuse the lower rates on through shipments and constitutes the ground upon which the policy of the railroads is defended. But if it is profitable even to that extent to carry merchandise of every grade 2056 miles to Portland at an average compensation of about \$30 per ton, must there not be, in the broadest sense, an unreasonable profit in taking \$52 a ton for carrying the same merchandise to

Spokane a distance of only 1512 miles? If a rate of less than one and a half cents per ton per mile yields a desirable margin over the bare cost of moving the traffic, may we not fairly infer that a rate of nearly three and a half cents per ton per mile pays an unwarranted return upon the whole investment? The difference between these figures is too great to permit the lower charge to be justified by the rule of expediency without condemning the higher charge by the rule of reasonable compensation. The fact that through business is sought at these terminal rates leaves no doubt in our minds that the Spokane rate is excessive.

This conclusion seems quite inevitable when comparison is made between rates to Spokane and rates to Missoula and points further east. The distance from St. Paul to Missoula is 1254 miles, only 258 miles less than to Spokane, yet the difference in first class rates is ninety cents per hundred pounds, viz: \$3.50 to Spokane and \$2.60 to Missoula. Rates on the other classes differ in about the same proportion. From every point of view the Missoula rate is materially lower than the Spokane rate, and no substantial reason appears for this striking inequality. The increased distance to Spokane is about 20 per cent. of the distance to Missoula, but the increase in rate for this distance is nearly 35 per cent. of the Missoula rate. Under the ordinary and suitable rules of tariff construction, rates per ton per mile diminish as distances increase, but Spokane's rate per ton per mile is considerably greater than Missoula's, as great in fact as Livingston's, only two thirds the distance from St. Paul. The increase in first class charges from Livingston to Missoula is only 25 cents per hundred though the distance is nearly as great as from Missoula to Spokane. The increase from Miles City to Livingston, a distance of 263 miles, is 65 cents, and this is the largest increase between any points east of Missoula at similar distances from each other. In brief the rates of the Northern Pacific are built up much faster from Missoula to Spokane than on any other portion of its line, though nothing appears in the way of more expensive construction or operation between these points to account for the relatively greater rates charged for the longer haul. The same classification is used to both points,



and the only variation from the comparative figures contained in the table set forth in the findings is in cases where the Transcontinental Association rate through to the Pacific, plus the local rate back to Spokane, makes a less rate than those figures give to Spokane; in such cases the lower rate is applied. But the instances must be quite rare when a combination of through and local rates materially improves the situation of the Spokane jobber, since the rates to all points west of Spokane are subject to the same exception, so that when the local rate back is used in making the through rate to Spokane a still lower local is used in making the through rate to the points west of that town.

The rates to Spokane and Missoula respectively might be compared indefinitely and from every standpoint, without finding any ground upon which the Spokane rate can be upheld. The more it is contrasted with the rates which Missoula receives, and even with those granted to Livingston, Miles City and other places, the more indefensible does it appear. Whatever rule is applied or test resorted to confirms the belief that it is relatively and inherently unjust. The fact that more favorable rates have long been accepted by the defendants for carrying merchandise to these other places, where the general conditions competitive and otherwise are substantially similar to those existing at Spokane, is sufficient proof that the transportation charges imposed upon the latter town are so clearly excessive as to constitute a violation of the law which requires all rates to be fair and reasonable.

The amount of reduction to which Spokane is entitled cannot easily be determined. There may be general agreement that the present tariff is too high, and great conflict of opinion as to how much it should be reduced. Any relieving order containing definite directions in that regard must be more or less arbitrary. Between the opposing interests of the defendants on the one hand and the Spokane shippers on the other, we must decide as fairly as we are able by prescribing for this locality such maximum rates as on the whole best accord with our judgment. We are largely influenced in the conclusions we have reached by the classified rates which the railroads have voluntarily fixed for transportation to the Pacific coast



and by the measure of compensation which, with equal freedom, they have so long accepted on shipments to Missoula and other points east of Spokane. Between the lower schedule to the latter places and the uniform rates now extending from the Idaho line to Portland, there must be an intermediate scale which approximates justice to both shipper and carrier. The practical basis we have decided to adopt is a percentage reduction from the classified rates now applied equally to Spokane and the Pacific coast; our conviction being that a fixed relation between intermediate rates to Spokane and class rates to the terminals is the most equitable theory upon which a re-adjustment can be effected. If the great bulk of terminal traffic was governed by the class rates now in force, so that those rates measured the compensation actually received for through transportation, we should have little hesitation in holding that the Spokane rate should not be much below ninety per cent of the class rate to the terminals. But in point of fact comparatively little of the through business pays the classified rates; the main volume of rail shipments to the Pacific takes the lower commodity rates made necessary by water competition. The class rates, therefore, are little more than nominal so far as through traffic is concerned. To base the Spokane reduction solely on those rates is to assume their reasonableness for through transportation if they were in fact obtained on a large portion of the business, and to apply a rule which, under existing conditions, would not insure relative justice to Spokane. That being the main purpose to be kept in view, we cannot overlook the long list of commodity rates which are freely accepted for carriage to terminal points, because those rates are of material and unmistakable value in determining what is just compensation for the shorter haul. Taking into account the respective rates actually established at terminal and intermediate points, and the wide difference between class and commodity rates on the principal articles to which they are applied, a greater reduction is required at Spokane than its distance and location would warrant if the class rates were in fact enforced on shipments to the Pacific. We must have regard also, in seeking the proper differential for Spokane, to the tariff rates maintained at Missoula and

points further east where the circumstances and conditions appear to be substantially the same. The result, in a word, must be arrived at upon an examination of the entire field and a survey of the whole situation. These considerations lead to the conclusion that the Spokane rate should be approximately eighteen per cent below the rates now in force at that point, and should not materially exceed eighty-two per cent. of the present class rates to Pacific terminals, the latter being used as a convenient basis for fixing the reduction at Spokane. For the purpose of avoiding fractions, and because there may be some reason why the reduction in first class rates should be under rather than over the percentage named, the general basis may be so far modified as to give the following figures, as a maximum reasonable rate, for each of the several classes, viz: Class 1, \$2.90; 2, \$2.46; 3, \$2.05; 4, \$1.64; 5, \$1.44; A, \$1.44; B, \$1.28; C, \$1.02; D, \$0.90; E, \$0.74.

We undertake no demonstration of the exact correctness of this conclusion. We take into account the geographical position of Spokane between Missoula on the east and Pacific points on the west, and make that division between the rates now applied to these respective localities which, all things considered, we deem just and fair to Spokane and best calculated to produce equitable results. It may be that the practical operation of these rates will disclose the propriety of some alterations, but that can be determined only by the test of experience, in the light of which the rates can be re-adjusted upon the application of either party. Our idea is to make the Spokane rate a definite percentage of the class rate to the Pacific, and we have fixed the relation which, under present conditions, is most in harmony with our convictions. In case the class rates to western terminals are reduced, there should be a corresponding reduction in rates to Spokane, unless such reduction should greatly increase the volume of shipments at classified rates to Pacific terminals, in which case the proper relation between Spokane and the terminals on such traffic can be further considered. This ruling will not apply to the commodity rates now accorded to Spokane nor will it excuse the defendants in withdrawing or increasing such commodity rates.

This decision will apply not only to rates from St. Paul and other eastern terminals of the defendants, but is intended to include directions for a proportionate reduction in the grouped rates from points east of St. Paul, so far as they are applied to Spokane traffic. The railroads which join with the defendants in making these rates were not made parties to this proceeding; but the case will be reopened, if necessary, for the purpose of bringing them in, to the end that all carriers affected may be bound by the order herein unless cause be shown for a different ruling.

It is quite apparent that a reduction of Spokane rates in compliance with this decision will require some modification in rates to shorter distance points to avoid infraction of the long and short haul clause of the statute. This will especially be the case on the line of the Union Pacific between Pendleton and Spokane, to both of which towns the rates on that road are the same. The lines of the defendants in this territory are practically parallel, the Northern Pacific reaching Pendleton through Spokane, and the Union Pacific reaching Spokane through Pendleton; but whatever embarrassment may result from this situation must be met in the first instance by the railroads themselves.

The contention of counsel that this Commission has no authority over the rates of the Northern Pacific railroad, by reason of certain provisions in its charter, has already been considered in another proceeding against that company where the same defense was interposed. *Raworth v. Northern Pacific R. Co.* 3 inters. Com. Rep. 857.

The opinion of the Commission in that case reviews the argument by which this claim of immunity is supported, and rejects the proposition as demonstrably unsound. The question will not be discussed in this report further than to add a single suggestion. The language mainly relied upon to sustain the position is, ". . . and they (the Board of Directors) shall from time to time fix, determine and regulate the fares, tolls and charges to be received and paid for transportation of persons and property on said road or any part thereof."

Does this provision add anything to the incidental and essential powers which are inherent in the nature of such a

corporation? If this express declaration were omitted, would not the same authority exist by necessary implication?

The right to construct and operate a railroad, whether acquired under general laws or by special enactment, includes and carries with it the implied right to fix and collect compensation for its services. In the absence of statutory restrictions there is no limitation upon this authority except the common law rule of reasonable charges. It seems to us, therefore, that the charter of this company confers no peculiar or exclusive control over its rates and charges, because, in the absence of the express authority contained in the paragraph quoted, its Board of Directors would have the same power in all respects that they now possess to "fix, determine and regulate, the fares, tolls and charges" in question. We adhere to the ruling in the Raworth case and hold that the Northern Pacific road, notwithstanding those provisions in its charter, is subject like all other interstate carriers to the authority conferred by Congress in the Act to regulate commerce.

There are some features of the case more or less novel and interesting, which are not referred to in this opinion, because want of time and the necessary length of our report confine the discussion to questions actually decided. We have attempted only to set forth the material facts upon which the controversy depends and the general reasons which have induced our conclusions. As some little time may be required for a revision of tariffs and re-adjustment of rates in conformity with this decision, a reasonable interval will be allowed for that purpose. Reducing our determination to the form of specific directions, the order of the Commission in this proceeding is stated as follows:

1. The defendants herein, by reason of the competition at their Pacific terminals of carriers not subject to the Act to regulate commerce, may make commodity rates on competitive traffic to those terminals which are less than their rates on like traffic to Spokane; but such commodity rates must not be lower than are necessary from time to time to meet such competition, nor allowed in any case on articles not actually subject thereto.

2. In the matter of car-load rates, mixed car-load lots at car-load rates, minimum weight of shipments entitled to car-load rates, and in all other respects, the defendants and each of them will furnish, provide and allow the same privileges, facilities and advantages on shipments to Spokane as are or may be at any time furnished, provided or allowed on like shipments to Portland or other Pacific terminals.

3. On or before the first day of January, 1893, the defendants in this case and each of them will prepare, publish and put in effect tariff rates on all classified traffic from their eastern terminals to Spokane which shall be approximately eighteen per cent. less than the tariffs now in force at that point, and shall not materially exceed eighty-two per cent of the class rates now applied both to Spokane and the Pacific terminals; and thereafter the defendants will not, nor will either of them, charge, collect or receive for transportation from their eastern terminals to Spokane a greater sum or amount than the rates fixed and prescribed by such reduced tariffs.

The following named rates on each of the ten classes respectively shall be deemed a compliance with this requirement, viz: Class 1, \$2.90; 2, \$2.46; 3, \$2.05; 4, \$1.64; 5, \$1.44; A, \$1.44; B, \$1.28; C, \$1.02; D, \$0.90; E, \$0.74.

In case of any reduction in class rates to Pacific terminals a further and corresponding reduction will be made on like shipments to Spokane except as provided in the foregoing opinion.

This order will apply not only to rates from St. Paul and other eastern terminals of the defendants, but is intended to include directions for a corresponding reduction in the grouped rates from points east of St. Paul so far as they are applied to Spokane traffic. As the railroads which join with the defendants in making these rates have not been made parties to this proceeding, the case will be reopened, if necessary, for the purpose of bringing them in, to the end that all carriers affected may be bound by this order unless cause be shown for a different ruling.

In this report and opinion all the Commissioners concur.

**THE POTTER MANUFACTURING COMPANY V. THE  
CHICAGO & GRAND TRUNK RAILWAY COM-  
PANY; THE ATCHISON, TOPEKA & SANTA FE  
RAILROAD COMPANY, AND THE SOUTHERN  
PACIFIC COMPANY.**

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Complaint filed October 17, 1891.—Answers filed November 2 to November 16, 1891.—Decided December 9, 1892.

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1. Continuance of a system of unjust rates cannot be required or excused on the ground that parties have made investments and entered into the business affected thereby on the faith of assurances from carriers of their maintenance, although a change might work injury to the parties whom such rates had unduly favored.
2. An advantage, resulting from just rates coupled with the enterprise and outlay necessary to utilize them, is legitimate, and carriers should not undertake to deprive a shipper of this advantage by a change of such rates.
3. A rate on a particular class of goods which is unreasonable or discriminatory in itself, is not justifiable on the ground that the same rate is given another (and in this case a competitive) class of goods and as applied to the latter is liberal and advantageous.
4. The question as to correct weights and shipments, as between carrier and shipper, is one of fact to be determined in a manner just to both parties and as to which the *ex parte* action of either cannot conclude the other.
5. Taking into consideration the difference in value of the unfinished and finished cheap bedroom sets involved in this case and the greater tonnage per carload which can be hauled of the former, and having in view the interests of both carrier and shipper, it is held, that the rate on unfinished cheap bedroom sets as shipped by complainant from Lansing, Mich., to Oakland, Cal., should not exceed 85 per cent. of whatever rate may be adopted for such sets in a finished condition.

*R. W. Montague*, for complainant.

*W. A. Day*, for Chicago & Grand Trunk Railway Company.

*A. B. Browne*, for the Atchison, Topeka & Santa Fe Railroad Company.

*H. S. Brown*, for the Southern Pacific Company.

## REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*.

The complainant, the Potter Manufacturing Company, is a corporation created under the laws of Michigan and engaged in the manufacture of furniture at Lansing in that state. The defendant railway companies are common carriers engaged in interstate transportation and under a common arrangement for continuous carriage transport the goods of complainant from Lansing to Emory, a station or switch near Oakland, California.

At its factory in Lansing the complainant does the machine and bench work on the furniture and ships it in an unfinished condition to the Michigan Furniture Company at Emory, where the work is completed. The Michigan Furniture Company is a corporation created under the laws of California. While the Potter Manufacturing Company (complainant) and the Michigan Furniture Company are distinct corporations, George N. Potter and James W. Potter of Michigan, own two thirds of the stock in each, and the latter was organized for receiving and finishing in California, the unfinished furniture shipped by the former from Michigan. The Potter Manufacturing Company ships no goods to California except to the Michigan Furniture Company. The freight on such shipments is paid by the Michigan Furniture Company and the transaction is a sale by complainant to that Company. The market for this furniture, when completed, is on the Pacific coast.

The substance of the complaint is that the rate charged by the defendants on cheap bedroom sets shipped by the complainant in an *unfinished* condition from Lansing to the Michigan Furniture Company at Emory is the same as that on such bedroom sets in a *finished* condition and that this is an unjust discrimination against complainant's shipments which consist for the most part of cheap unfinished sets, in favor of shippers of completed sets and gives an undue or unreasonable preference to the traffic in such finished furniture over that in such unfinished furniture.

The rate complained of was fixed by the Transcontinental Association Tariff No. 34, which became effective Sept. 21, 1891. In that Tariff,



"Furniture, as from machine or bench, K. D., *unfinished*, in the white, not mahogany, rosewood, ebony, black walnut, maple or cherry, minimum weight of 24,000 lbs. per car not exceeding 30 ft. in length inside measurement, proportionate minimum weight to apply on cars in excess of 30 ft. in length," is charged a rate of \$1.30 per hundred pounds, and the same rate is fixed for

"Bedroom sets, not mahogany, rosewood, ebony, black walnut or cherry, consisting of six pieces, bedstead, bureau, wash-stand, small table and two chairs, actual value \$25.00 or less per set; or three pieces, bedstead, bureau and washstand, actual value \$20.00 or less per set, O. R. chafing and breakage, minimum weight 20,000 lbs."

In the above item of the Tariff relating to unfinished furniture, the minimum weight is fixed at 24,000 lbs. "per car not exceeding 30 ft. in length inside measurement." This is objected to by complainant as an unjust discrimination. It was announced at the hearing (April 8, 1892) by counsel for defendants, that the limitation as to length of car had been done away with, and it appears to have been omitted in Transcontinental Association Tariff No. 36, effective July 18, 1892.

In this Tariff the item as to finished bedroom sets is also changed by the substitution of sets of four pieces (chairs being left out) of value of \$25.00 or less, for sets of six pieces, and by the addition of sets of two pieces, bedstead and bureau, of value of \$16.50 or less. It may be noted that this substitution of sets of four pieces for sets of six was made after the testimony in this case had been taken and that John H. Potter testified, among other things, that the Michigan Furniture Co. (of which he was a stockholder) did not handle chairs at all and made all its price lists on four piece sets. In the latter Tariff *mixed* carloads of the cheap bedroom sets of minimum weight of 20,000 lbs. are also provided for at the rate of \$1.30 per hundred pounds.

As to all finished bedroom sets except the cheap ones above specified, the rate is \$2.75 per hundred pounds from Michigan points. At the time (Sept. 21, 1891) when Tariff No. 34, under which finished and unfinished cheap bedroom sets have the



same rate, was adopted, and prior thereto, there was no distinction made in the matter of rates between cheap and costly bedroom sets, the rate at that date being \$2.75 on cheap sets as well as on the more costly, and the change was brought about by reducing the rate on the cheap bedroom sets from \$2.75 per hundred pounds to \$1.30. At the same time the rate on such unfinished sets was reduced from \$1.35 per hundred pounds to \$1.30. These reductions amount to \$1.45 on finished and 5 cents on unfinished sets.

Prior to Sept. 21, 1891, a distinction in rates as between finished and unfinished cheap sets had been observed, the rate on the former having been materially higher than that on the latter. The following table gives the rates as they appear from a sworn statement furnished by J. W. Potter, General Manager of complainant, and not controverted, at the dates named therein on shipments of these two classes of freight to Oakland:

Date	Rate Unfinished	Rate Finished	From
May, 1886.....	\$ .70	\$1.60	Chicago
April, 2. 1887.....	.80	1.60	"
July, 1887.....	.96	2.10	"
August, 1887.....	1.02	2.10	Factory
March, 1888.....	1.11	2.10	"
September 1, 1888.....	1.20	3.50T.C.	"
October 22. 1889.....	1.28	2.75	"
January 15, 1891.. ..	1.35	2.75	"
September 21, 1891....	1.30	1.30	"

The change, making the rate on finished cheap bedroom sets the same as that on unfinished furniture, went into effect, as before stated, Sept. 21, 1891, but it was determined upon at the June session, 1891, of the Transcontinental Association, and this fact appears to have become known to the trade. The evidence tends to show that in anticipation of the change there was a large falling off during July and August, 1891, in the business of the complainant in the shipment of unfinished cheap bedroom sets to the Michigan Furniture Company at Emory and in the business of the latter company in such sets, and after the new rate became effective, there was a still greater decrease, if not a total discontinuance, of such shipments by the complainant. There were very few (if any, besides complainant) furniture companies or dealers in California

that were prepared for manufacturing unfinished furniture at Michigan points and shipping it in that condition for completion and sale in the California and other Pacific coast markets, and the high rate on finished cheap furniture prevented its importation to any extent. These dealers, therefore, bought a large proportion of their cheap furniture from complainant's consignee, the Michigan Furniture Company. Since the adoption of the new rate on cheap bedroom sets *finished*, the shipment of these sets from Michigan and Wisconsin to the Pacific coast has greatly increased. One witness states that the importation of that class of goods by the California dealers has become tenfold greater. It appears that the reduction of the rate on completed sets was asked for by the Pacific coast furniture men, who represented that "the \$2.75 rate on cheap bedroom sets was prohibitory and precluded their importing that grade of furniture," and the General Freight Agent of the Southern Pacific Company states that in granting the reduction the object of the roads was to "give these people (Pacific coast traders) an opportunity of competing with the other good people that were bringing their goods here in unfinished form and completing them on this (Pacific) coast."

It is stated in the complaint that the rate of \$1.30 per hundred pounds on cheap unfinished furniture as provided in the Tariff of Sept. 21, 1891, "has been and would still be satisfactory except for the great reduction in finished sets;" but it is claimed that the rate for such unfinished furniture should not, since the reduction of the rate on finished sets to \$1.30 per 100 pounds, "exceed 90 cents per hundred pounds from Michigan points." In other words the complaint is, not of the rate on the unfinished cheap furniture as being unreasonable in itself, but of the alleged discrimination against the unfinished furniture resulting from giving unfinished furniture and finished sets the same rate.

In the case of *Bates v. Pennsylvania R. Co.*, 2 Inters. Com. Rep. 715, 3 I. C. C. Rep. 435, the complaint was the *reverse* of that in the present case. It appears that the defendant carriers in that case had for a long time maintained the *same* rate on corn and its direct products from Indianapolis to the eastern seaboard, and while this was the case and relying upon

this equal rating, the complainants and others had at and in the vicinity of Indianapolis made investments and entered upon the business of buying and grinding corn and selling its direct products near eastern seaboard points where the principal markets for such products existed. Suddenly a discrimination was made between the two commodities by reducing the rate on corn four and a half cents per hundred pounds below that on the products. This resulted in serious injury to the milling industry at Indianapolis, and the Commission say: "The market for the product being in the east, it is plain that it would be folly to grind the corn in the west and transport the product when four and a half cents per hundred pounds could be saved by transporting the corn to the eastern market and grinding it there, *when presumably it could be done at about the same cost at both points.*" It was accordingly held, that the reduction of the rate on corn below that on its direct products, being "*without necessity or advantage to the carrier or any reason founded on the character or condition of the traffic,*" gave the millers at the eastern termini of the defendant roads an undue advantage over the complainants and other millers at and in the vicinity of Indianapolis and subjected the latter to an undue disadvantage, in violation of section 3 of the Act to regulate commerce, "notwithstanding the new rate on corn was open to all persons equally and with equal service."

In the present case, as in *Bates v. Pennsylvania R. Co.* 2 Inters. Com. Rep. 715, 3 I. C. C. Rep. 435, it will be presumed in the absence of proof on the subject, that the cost of manufacturing cheap bedroom sets or finishing such sets when in the condition in which they are shipped by complainant from Lansing, is about the same in Michigan and Wisconsin as on the Pacific coast. This being so, and it being borne in mind that the Potter Manufacturing Company (complainant) and the Michigan Furniture Company, although distinct legal entities, are practically one in interest, the much smaller rate on unfinished furniture (\$1.35 per cwt.) than on finished cheap sets (\$2.75 per cwt.) gave those companies a very great advantage over the shippers of the latter from Michigan and Wisconsin. This advantage, while primarily over the manufacturers and shippers of completed cheap sets from those

states, operated also to the disadvantage of the California and Pacific coast jobbers by depriving them of the benefit of the lower prices which presumably would have resulted from competition on equal terms between complainant and its complement, the Michigan Furniture Company, on the one hand, and the western manufacturers of such sets on the other. The Pacific coast dealers, therefore, importuned the roads for a reduction of the rate on finished cheap sets, and the latter thereupon adopted a tariff and classification which gave unfinished cheap furniture and finished cheap bedroom sets the same rate.

All the complainant asked for in the case of the *Chicago Board of Trade v. Chicago & A. R. Co.*, 3 Inters. Com. Rep. 233, 4 I. C. C. Rep. 158, in order to place the Chicago packers on an equal footing with the western packers was the *same* rate on the live hog as on the hog product, and all the Indianapolis miller claimed in the Bates case, *supra*, as necessary to place him on an equality with the seaboard miller, was the *same* rate on corn and its direct products. Under the principles laid down in the latter case, the lower rates on unfinished cheap bedroom sets than on finished cheap bedroom sets which prevailed from the east to the Pacific coast prior to Sept. 21, 1891, were in violation of section 3 of the Act to regulate commerce, *unless they were justified by "necessity or advantage to the carrier" or some "reason founded on the character or condition of the traffic."*

It was found in those cases that these grounds of justification were not shown by the evidence to exist and the principal questions in this case are, (1), Is there any such justification for lower rates on unfinished cheap bedroom sets than on finished cheap bedroom sets on shipments thereof over the defendant's lines from the east to the Pacific coast, and, (2), If so, how much lower should the rate be on the former than on the latter.

As preliminary to the discussion of these questions, we remark that the fact, which the evidence tends to show and upon which great stress is laid by complainant, that the Potter Brothers (who originally conducted the business in Michigan and afterwards virtually organized the complainant and the

Michigan Furniture Company) entered into the manufacture of unfinished cheap furniture and made their investments in Michigan and California on the faith of assurances by railroad companies of low rates on such furniture and a maintenance of the greatly lower rates thereon than on finished goods, is not in itself a sufficient reason for adhering to such disparity in rates, if it is shown to be wrong in principle. In the case of *Bates v. Pennsylvania R. Co.*, 2 Inters. Com. Rep. 718, 3 I. C. C. Rep. 444, it is said, that "this Commission would not hold that a classification that was wrong should be adhered to, *although* its change might work injury to individuals whom the wrong classification had unduly favored."

On the other hand, the fact, that the lower rates on the unfinished goods shipped by complainant than on such goods in a finished condition, gave complainant and the Michigan Furniture Company so great an advantage as we have shown over the shippers of the latter does not authorize a change in the rate making it the same on the two classes, if the pre-existing inequality was on principle just and proper in itself. Carriers should not undertake to deprive a shipper of an advantage resulting from just rates by change of those rates. An advantage is legitimate, if it results from just rates coupled with the enterprise and outlay necessary to make use of such rates. Others may compete with the Potters by doing as they have done and this will result in benefit to the public by reducing the price of the commodity to the customer.

As bearing upon the question, whether a lower rate on complainant's unfinished furniture than on such furniture when finished is justified by "any reason founded on the character and condition of the traffic," we will first consider the relative values of the two articles. The evidence on this point is conflicting and very indefinite. The machine and bench work is done at Lansing, and the finishing, which includes varnishing, at Emory; at the latter place, also, the plate glass and trimmings are furnished and the goods are packed for market. The cost of thus completing the work is stated by one witness to be about \$3.50 on a set that would sell for \$10.00 in carload lots, and \$7.00 on a set that would bring \$18.00 in carload lots. Another witness estimates it to be about \$1.00 on the cheapest

sets and \$1.50 on the more expensive. We are of the opinion that the first estimate is the more reliable. The evidence is that 61 per cent. of the shipments of completed sets from the factory at Emory average \$7.50 per set; 4 per cent., \$15.00; and 35 per cent., \$10.00. These shipments, then, would not average on the whole over \$10.00 per set, and the cost of completing the work at Emory would not average over \$3.50. Deducting this from \$10.00, we have the average value of the unfinished sets as shipped from Lansing, about \$6.50 per set. The \$3.50 is the actual cost of completion, and no profit is included. The completed sets would appear, therefore, to be worth about 50 per cent. more than the unfinished goods. The evidence is that the completed sets average about 235 lbs. to the set; there is no evidence as to the weight of the unfinished material of a set as shipped from Lansing. At 235 lbs. per set a minimum carload (20,000 lbs.) would contain about 85 sets, and these at \$10.00 per set would be worth \$850. Deducting \$3.50 per set (the cost of finishing), the unfinished material for these sets as shipped from Lansing would be worth about \$570. This is as definite a result as we have been able to arrive at from the meager and conflicting evidence. While it is far from satisfactory, and we cannot affirm its accuracy, we are of the opinion that the value of the unfinished material as shipped by complainant is materially less than that of the finished sets.

Cost of service and the carrier's compensation are also important elements in fixing transportation charges. There is no evidence as to the actual cost of carrying either the unfinished or finished furniture. There appears to be nothing in the nature of the unfinished material for cheap bedroom sets as shipped by complainant or in the circumstances and conditions attending its transportation which calls for a higher than the average rate on shipments in general. The following table gives the estimated cost of carrying a ton of freight in general a mile as reported to this Commission by the Atchison, Topeka & Santa Fe and Chicago & Grand Trunk companies, for the years 1888, 1889, 1890 and 1891, and the cost on the line of the Southern Pacific Company, in the absence of a report, as computed by our statistician:

Name of Road	1888	1889	1890	1891
	cts.	cts.	cts.	cts.
Atchison, Topeka & Santa Fe.....	.861	.866	.656	.720
Chicago & Grand Trunk.....	.404	.411	.394	.395
So. Pacific Atlantic System.....	.733	.972	.679	.751
“ “ Pacific System.....	.829		1.024	.900

The average cost, on the basis of the above figures, of carrying a ton a mile on these roads to the Pacific coast, was, .698 cents for 1888, .749 cents for 1889, .691 cents for 1890, and .672 cents for 1891. The distance from Lansing to Oakland being 2790 miles, the rate per ton per mile, at \$1.30 per hundred pounds for the whole distance, is .931 cents. Deducting from this the above average estimated cost of carrying a ton a mile on the three roads to the Pacific coast for the year 1891, there is left .259 cents, or over 2½ mills, per ton per mile. This amounts to \$7.22 per ton for the 2790 miles, and on a carload of 24,000 lbs. (12 tons) to \$86.64, as the amount per minimum carload, which the \$1.30 rate yields the defendants over the estimated average cost of carriage in general. For the years 1888, 1889 and 1890, it is somewhat less.

The complainant introduced in evidence a statement of fifteen of its carload shipments from Lansing to Oakland during the period from May 27 to September 11, 1891. The total “invoice value” of these shipments appears to have been \$14,305.52, an average of \$953.66 per carload, and the total freight paid \$5,502.73, an average of \$366.85 per carload and over 38 per cent. of the average invoice value. These shipments were made under the \$1.35 rate. The total weight of these shipments to Oakland is given at 403,830 lbs. At the present rate of \$1.30, the total freight on that tonnage would be \$5,243.94 or an average per carload of \$349.59, which is over 36 per cent. of the above average invoice value per carload.

The unfinished furniture being required by the tariff under consideration to be shipped “knocked down” (K. D.), a larger tonnage of it can be carried in a car of given dimensions than of the finished bedroom sets as to which there is no such requirement. The carriers, recognizing this, have fixed the minimum carload of unfinished furniture at 24,000 lbs. and of the finished sets at 20,000 lbs. These carloads, respectively, at the rate of \$1.30 per hundred pounds, yield the carrier,



\$312.00 and \$260.00—being \$52.00 more on a carload of unfinished furniture than on a carload of the finished sets. The actual weight per carload of complainant's shipments appears to be much in excess of the minimum prescribed, as the weights of the fifteen taken at Oakfield and referred to above show an average per carload of 26,922 lbs. and of four others, an average of 39,455 lbs. There is no reliable evidence as to the actual weight of carloads of finished sets, but it is shown that 20,000 lbs. and more of such sets can be loaded *in the cars used for their transportation*. While "a carrier should receive a greater compensation in the aggregate for hauling a carload of large tonnage than one of less tonnage, yet, other things being equal, as a general rule, the rate per hundred pounds should be less in the former than in the latter case." *Murphy, Wasey & Co. v. Wabash R. Co.* 3 Inters. Com. Rep. 725, 5 I. C. C. Rep. 122. This principle seems to have had almost universal recognition by carriers in their rate sheets and systems of classification—the rate per hundred weight being less, and the class being lower, other things being equal, where a larger minimum carload weight is required. In the case of *Murphy, Wasey & Co. supra*, it was held, that a lower than the existing rate should be given unfinished chair material in view "particularly of the large minimum weight to be allowed and the larger actual weight per car of complainants' shipments." The minimum weight of 24,000 lbs. per carload of unfinished furniture is not only greater than that fixed for cheap bedroom sets completed but also than that on nine tenths or a greater proportion of the articles covered by the Transcontinental Association tariffs.

As appears from the table of rates heretofore given, the defendants for a number of years prior to Sept. 21, 1891, maintained rates on unfinished furniture fifty per cent. or more lower, on an average, than the rates on finished furniture, and they still keep up this disparity in rates as between all unfinished and finished furniture except the unfinished and finished cheap bedroom sets specified in the items of their tariff which we have quoted. No just reason has been shown for making the latter an exception to the general rule. The evidence tends to show that the railroad authorities concede that in the nature of things a lower rate should be placed on unfinished and



finished furniture. The object of the roads in giving unfinished and finished cheap bedroom sets the same rate, appears to have been, as stated by the General Manager of the Atlantic & Pacific Fast Freight Line, "to shut up the local factories on the Pacific coast, that were making this class of cheap stock and especially pine sets" and thus "give extra traffic" to the defendants.

Under the item in relation to "unfinished furniture," there is no limitation as to value or character of such furniture, except as to the kind of wood to be used in its manufacture. This authorizes the shipment at the \$1.30 rate of expensive as well as cheap unfinished furniture and of other unfinished furniture besides the bedroom sets. It is contended in behalf of the defendants, that this is sufficient "to divest the tariff of anything like discrimination"—in other words, that the benefit to be derived from the low rate on the costly unfinished goods compensates or is an offset for any injury or disadvantage which may result to the traffic in unfinished material for cheap bedroom sets from giving those sets the same rate as such finished material. This position is not sustainable on principle. A rate on a particular class of goods which is unreasonable or discriminatory in itself, cannot be justified on the ground that the same rate is given another class of goods and as so applied is liberal and advantageous. The benefit to the one is no proper offset for the injury done the other. If a party were engaged in shipping both classes of traffic, the question whether or not the average result would be advantageous to him, would depend upon the quantities shipped of each. In the present case, it appears that the bulk of the complainants' shipments consists of the unfinished cheap bedroom sets. Moreover to sustain the application of the same rate to two articles of widely divergent values and tonnage per car on the ground of reasonable "general average," is to imply that it is too low on one and exorbitant on the other.

#### CONCLUSIONS.

The action of the roads in reducing the rate on the finished cheap bedroom sets specified in their tariff below that on

greatly more valuable finished furniture was, in our opinion, correct, and must be sustained. The same reason, however, that justified this action in reference to the two classes of finished furniture would seem to apply to them in their unfinished condition. We can, furthermore, find no ground for making the unfinished cheap bedroom sets an exception to the general rule recognized by the defendants that unfinished furniture should have a lower rate than the finished of the same grade. Our conclusion is, that the cheap bedroom sets described in the tariff when transported in an unfinished condition as shipped by the complainant, should have a lower rate than such sets when finished, and, also, than the more costly unfinished furniture. The question is, how much lower or what proportion should the rate on unfinished cheap sets bear to that on the finished. As before stated, the complaint is not that the existing rate is unreasonable in itself, but that the same rate is given the two classes of freight. It appears from the statement of rates furnished by complainant that for the four years preceding Sept. 21, 1891, the rates on shipments of unfinished furniture from complainant's factory at Lansing varied from \$1.02 to \$1.35 per hundred pounds. During the last three years of that period, the average was over \$1.22 per hundred pounds. It must be borne in mind, however, that these rates applied to expensive as well as cheap unfinished furniture and must have been fixed with regard to that fact. If they had covered cheap furniture alone, it is reasonable to suppose they would have been less. Taking into consideration the difference in value of the unfinished and finished furniture involved in this inquiry and the greater tonnage per carload which can be hauled of the former, and having in view the interest of the carrier as well as the shipper, our opinion is that the rate on cheap unfinished bedroom sets should not exceed 85 per cent. of the rate on such sets in a finished condition. While the rate on finished sets remains as at present \$1.30, this will give a rate within a fraction of \$1.10 on the unfinished sets.

Our attention is called by the defendants to the fact, that the freight on the shipments of complainant, The Potter Manufacturing Co., from Lansing to Oakland is paid by the

consignee, The Michigan Furniture Co. Whether freight is paid by the shipper or consignee, it is equally a charge on the commodity in the hands of the shipper, and if excessive, or discriminatory, or otherwise in violation of law, may be made the subject of complaint before this Commission on the part of the shipper as a party in interest. Moreover, the two corporations, while distinct in law, are substantially under the same ownership and are operated in unison, the one as supplementary of the other. No order of reparation, however, will be granted in this case as asked for in the complaint, requiring repayment to complainant of the difference between the rate complained of and that determined by us to be reasonable.

The complainant further asks in the brief filed in its behalf for "an adjudication that freight charges upon complainant's goods may be based upon weights at the point of shipment, as per original bill of lading, and that all sums heretofore collected on said goods in excess thereof were unlawfully taken and shall be repaid to the Michigan Furniture Co. who paid the same." It appears that the weights of complainant's carloads as taken at Oakland, the point of delivery, and on which the freight charges are based, are greater than the weights given at Lansing, the point of shipment. It is not shown by whom or how the weights are determined at either point and there is nothing in the record to indicate which set of weights is correct. There is no proof, therefore, of an overcharge by means of false weights upon which we can act, and nothing upon which to base "an adjudication that freight charges upon complainant's shipments must be based upon weights at point of shipment." If the weights at point of shipment are furnished by the shipper, the roads would have the right to verify them by reweighing and if found to be incorrect, to charge and collect freight on the true weight. The question is one of fact to be determined in a manner just to both parties and as to which the *ex parte* action of either cannot conclude the other.

It is also made a ground of complaint that complainant's shipments are carried by Emory, where the Factory of the Michigan Furniture Company is located, about a mile to the 16th St. Station, Oakland, and is brought back from that station

to Emory at a charge of 25 cents per ton. The complainant alleges that Emory is a regular station of the Southern Pacific Co., but the weight of the evidence is that it is not a station at which transcontinental freight is delivered. It further appears that the factory of the Michigan Furniture Co. is not located on the main line at Emory but on a local track, and that complainant's carloads are hauled from the regular station in Oakland over this local track to Emory by switch engines and that the charge for this service is reasonable.

Our order is, that the rate on cheap *unfinished* bedroom sets, such as are described in the item of the tariff under consideration, shall not exceed from Michigan points to California points 85 per cent. of whatever rate may be fixed for such sets in a completed condition and that the defendants forthwith cease and desist from charging or collecting a higher rate on the former than that above indicated and also make such alterations in their tariff of rates as will bring it into conformity with the conclusions herein arrived at.

**P. H. LOUD, JR., V. THE SOUTH CAROLINA RAILWAY COMPANY; THE BLACKVILLE, ALSTON & NEW-BERRY RAILROAD COMPANY; THE CHARLOTTE, COLUMBIA & AUGUSTA RAILROAD COMPANY; THE CAROLINA, CUMBERLAND GAP & CHICAGO RAILWAY COMPANY; THE VIRGINIA MIDLAND RAILWAY COMPANY; THE BARNWELL RAILROAD COMPANY; THE RICHMOND & DANVILLE RAILROAD COMPANY; THE PORT ROYAL & WESTERN CAROLINA RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY AND THE NORTH CAROLINA RAILROAD COMPANY.**

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Complaint filed, February 13, 1890.—Answers filed, March 6 to May 15, 1890.  
—Testimony taken at Aiken, S. C., April 3, 1891, and at Atlanta, Ga., March 24, 1892.—Brief filed for Complainant, April 26, 1892.—Decided, December 24, 1892.

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1. The question, whether property of a carrier in the hands of a receiver appointed after the matters complained of before this Commission are alleged to have occurred, is subject to an order of reparation issued by this Commission, is one to be presented to and disposed of by the courts on proceedings therein for the enforcement of such order.
2. Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic (*Delaware State Grange of Patrons of Husbandry v. New York, P. & N. R. Co.* 3 Inters. Com. Rep. 561, 4 I. C. C. Rep. 605), but it is incumbent on parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value.
3. In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered as well as the result of the business to the shipper or producer of the traffic.
4. Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and, if a carrier charging a rate based on such special service, fails to render it, to the damage of the shipper, and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law.

5. A reduction in rates by a carrier is not *per se* evidence that the former rates were unreasonable, as such reduction may, as in the present case, be accounted for because of a decrease in cost of transportation and an increase in the volume of the traffic to which such rates apply.
6. The rates on melons complained of in this case having been materially reduced by the defendant carriers since the commencement of this proceeding and there being no satisfactory evidence that the rates so reduced are unreasonable or excessive, the complaint is dismissed.

*Messrs. Croft & Chafee, John Gary Evans and E. S. Hammond,* for complainant.

*Messrs. Lawton & Cunningham and Joseph Ganahl,* for the Port Royal & Western Carolina Railway Company.

*J. T. Worthington and John N. Staples,* for the Richmond & Danville lines.

*James A. Logan,* for Pennsylvania Railroad Company.

*Messrs. Brawley & Barnwell,* for the South Carolina Railway Company.

#### REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner* :

The complaint in this case is made by P. H. Loud, Jr., who, it is alleged, during the seasons of 1887, 1888 and 1889, was engaged in planting and buying watermelons and shipping them over lines formed by defendants from Williston, Blackville, and other points in the state of South Carolina, to New York, Philadelphia, Baltimore, Washington and other cities on those lines.

The complainant charges :

1. That the defendants had established 24,000 lbs. as the weight of a carload of melons and exacted from complainant as freight on such carload from shipping points on the South Carolina Railway, the sum of \$87.12 to Washington and Baltimore, \$96 72 to Philadelphia, and \$103.92 to New York, and charged "excess freights on all carloads which they claimed exceeded 24,000 pounds in weight, the excess rates being per hundred pounds for all over 24,000 pounds;" that these rates of freight are unreasonable and excessive, and that 32,000 pounds would be a just and fair weight to allow for a carload

of melons and \$75.00 would be an adequate and reasonable freight charge for such carload.

2. That the defendants, "in violation of the law and the rights of the complainant, have discriminated against him by charging him a higher rate of freight than they did other shippers of same weights per carload over their lines of railways."

3. That the defendants "in determining the weight of such carloads have rendered untrue and false weights."

4. That the defendants have "in a number of instances charged a higher rate per hundred pounds than they agreed to charge" and "have changed their rates of freight without giving the notice required by law."

5. That melons being of a perishable nature, the defendants received complainant's shipments with the understanding that they were to have rapid transportation to their destination and immediate delivery, but that in many instances the defendants failed to make "rapid transit and immediate delivery, in consequence of which the melons were overripe and in bad condition on their arrival, to the great injury of the complainant."

The complainant claims that by reason of these alleged breaches of contract and violation of the Act to regulate commerce on the part of defendants, he has been damaged to the amount of \$5,000 and asks for an order of reparation; he further prays that the defendants be required to cease and desist from said alleged violations of the law, and for general relief.

Answers have been filed by or on behalf of all the defendants except the Carolina, Cumberland Gap & Augusta Railroad Company and the Barnwell Railroad Company. These answers put in issue all the allegations of the complaint charging violations of the interstate commerce law or other wrongful and illegal act on the part of the defendants or any of them. The answer on behalf of the South Carolina Railway Company is filed by D. H. Chamberlain, who alleges among other things that he was, October 7, 1889, appointed receiver of that company in proceedings in the United States Circuit Court for the District of South Carolina and that "inasmuch as all the matters and things complained of occurred before his appointment as such receiver, no judgment should be entered affecting

the property in his hands." As to this proposition, we here remark, that the question raised by it would properly be presented and disposed of on proceedings in the courts for the enforcement of any order of reparation which might be issued by us in this case.

The Richmond & Danville Railroad Company, in answering for itself and the Charlotte, Columbia & Augusta Railroad Company, The Virginia Midland Railway Company and the North Carolina Railroad Company, alleges that during the period embraced in the complaint, it (the Richmond & Danville) "was operating said other roads" for which it answers "under contracts of lease made with them respectively, and that neither of said roads was during said period in charge of or operating its line of railway or committed either or any of the acts alleged in the complaint." This respondent further asked that an order be issued, requiring the complainant "within a day therein named to make his complaint more certain and definite to the end that the Commission and the respondents be duly informed and notified of the cause of complaint set forth only in general language in said complaint." In response to this request an order was issued, March 10, 1890, requiring the complainant within twenty days from the service of the order to file a verified statement "showing as nearly as he may be able each shipment of melons over the respondents' lines during the period covered by the complaint, with the quantity and weight, point of origin and destination and dates of shipment." The complainant in compliance with this order filed a list of shipments during the months of July and August, 1889, accompanying it with an affidavit setting forth that in the limited time allowed, he was able to furnish only a "partial statement of his transactions with the defendant companies, showing a portion of his shipments for the season of 1889, upon which he would make his case." Subsequently, when the testimony was taken, the complainant, through his attorney, stated that he could not furnish a statement of all the shipments of which he complained unless the railroads would make out for him a list of all the cars he had shipped and their destinations.



The Richmond & Danville Company furnished a statement of shipments by the complainant from stations on the Charlotte, Columbia & Augusta Road during July and August, 1889. None was furnished by the other defendants.

### FACTS.

We find the following to be the material facts established by evidence:

1. The complainant was engaged during the seasons of 1887, 1888 and 1889, in planting and buying watermelons and shipping them to market over lines of railway formed by the defendants. These shipments were made from various localities in the state of South Carolina. As appears from the statements filed by the complainant and the Richmond & Danville Company, shipments during the season of 1889 (July and August of that year) were made by complainant from Williston, Bamberg, St. Matthews, Elko, Grahams and other towns and stations on the lines of the South Carolina Railway; from Lewiedale, Summit, Leesville, Batesburg, Johnston and Ridge Springs, on the Charlotte, Columbia & Augusta Railroad; from Ellenton and Hattievile, on the Port Royal & Augusta Railway; from Barnwell on the Carolina Midland Railroad; and from four stations on the Blackville, Alston & Newberry Railroad. (None of these shipments appear to have been made from stations on the Port Royal & Western Carolina Railway and the complaint was probably aimed at the Port Royal & Augusta Railway.) The market points or points of destination of these shipments were New York, Philadelphia, Newark, Baltimore, Washington, Richmond, and numerous other cities in the states of New York, Pennsylvania, New Jersey and Virginia.

2. The defendant roads are common carriers and constitute lines of railway over which the shipments of complainant are transported under a common arrangement for continuous carriage between the localities above named, and in respect to such transportation are subject to the Act to regulate commerce. The South Carolina Railway Company has a main line from Charleston to Augusta; also, a line from Branchville

on the said main line to Columbia, and several smaller lines, among which is the line from Aiken on the main line to Edgefield Court House, called the Carolina, Cumberland Gap & Chicago Railway Company, which is made a party defendant to the complaint. The Blackville, Alston & Newberry Railroad (now the Carolina Midland) is a small branch road which connects with the South Carolina Railway at Blackville on its main line. The Barnwell Railroad is a branch of the Carolina Midland from Barnwell on the latter road to Walterborough. The Port Royal & Western Carolina Railway is a part of the Central Railroad of Georgia extending from Spartansburg where it connects with the Richmond & Danville system to Augusta. The Charlotte, Columbia & Augusta Railroad is leased and operated by the Richmond & Danville and runs from Charlotte through South Carolina *via* Columbia to Augusta, connecting with the South Carolina Railway at Columbia and Augusta. The Virginia Midland Railway and the North Carolina Railroad are also divisions of the Richmond & Danville system. The Richmond & Danville system extends from Augusta *via* Columbia and Charlotte to Danville and from Danville by one line to Richmond and by another *via* Lynchburg and Charlottesville to Alexandria; at the latter point it connects with the Pennsylvania Railroad, by which the carriage of complainant's melons is continued to Washington, Baltimore, Philadelphia, New York and other points. In 1887, the melon traffic went largely by the Clyde Line of steamers from Charleston and to some extent by the Atlantic Coast Line, but in 1888 and 1889 it was turned to the route *via* Columbia and the Richmond & Danville Line, and in the latter year, the complainant's shipments appear to have been exclusively by that route. The rates by these different lines were the same and they were equally open to shippers, but the South Carolina Railway Company preferred the Richmond & Danville line because of return loads by that line and would not furnish cars for shipments over the coast line.

3. The rates from stations on the South Carolina Railway are the same to any one point of destination; this is the case for the most part, also, as to the other initial roads. The rate sheets giving rates from stations on the South Carolina Railway

and its local tributaries, the Carolina, Cumberland Gap & Chicago Railroad, the Blackville, Alston & Newberry Railroad and the Barnwell Railroad, to the northeastern markets *via* Columbia and the Richmond & Danville route, are issued from the freight office of the South Carolina Railway at Charleston by the General Freight Agents of that Company and of the Richmond & Danville Railroad. The rate sheets giving rates from stations on the Charlotte, Columbia & Augusta Railroad (which as before stated is a division of the Richmond & Danville system running from Charlotte through South Carolina *via* Columbia to Augusta) are issued from the General Freight Department of the Richmond & Danville Railroad Company at Richmond. The following table shows the rates on melons per hundred pounds to the points named therein, from stations on those roads and the Port Royal & Augusta Road, during the months of July and August, 1889, and for some time previous, with minimum carloads of 24,000 pounds:

From	Stations on South Carolina Railway.	Stations on Carolina, Cumberland Gap & Chicago Railroad.	Stations on Barnwell Railroad.	Stations on Barnwell, Alston & Newberry Railroad.	Stations on Charlotte Columbia & Augusta R.R. So. of Columbia.	Columbia.	Stations on Port Royal & Augusta Railway
To	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Richmond, } Lynchburg, } Petersburg, } Norfolk, }	31.3	33.5	33.5	34.	25.	23.	31.
Alexandria, ) Washington, ) Baltimore, )	36.3	38.5	38.5	39.	30.	28.	36.
Philadelphia,	40.3	42.5	42.5	43.	34.	32.	40.
Jersey City, ) New York, )	43.3	45.5	45.5	46.	37.	35.	43.

The above rates applied to the stations on all the initial roads in South Carolina, from which it appears that complainant's melon shipments were made.

Since the institution of proceedings in this case, the above rates have been reduced, and, as appears from tariffs on file with this Commission, are now as follows:

From	Stations on South Carolina Railway.	Stations on Carolina, Cumberland Gap & Chicago Railroad.	Stations on Carolina Midland Railway (B. A. & N. R. R.)		Stations on Charlotte Columbia & Augusta R. R. So. of Columbia.	Columbia.	Stations on Port Royal & Augusta Railroad
To	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Richmond, } Lynchburg, } Petersburg, } Norfolk, } Alexandria, } Washington, } Baltimore, } Philadelphia, } Jersey City, } New York, }	24.	26.5	26.5	27.25	24.	23.	28.
	29.	31.5	31.5	32.25	29.	28.	33.
	33.	35.5	35.5	36.25	33.	32.	37.
	36.	38.5	38.5	39.25	36.	35.	40.

The distances from the shipping points named below to New York, Philadelphia, Baltimore and Washington, are, as follows, *via* defendants lines:

DISTANCES.

From Points on the C. C. & A. Ry.

	To	New York.	Phila- delphia.	Balti- more.	Wash- ington.
From	Lewiedale, S. C.....	741	651	553	513
	Summit, S. C.....	743	653	555	515
	Leesville, S. C.....	748	658	560	520
	Batesburg, S. C.....	751	661	563	523
	Johnston, S. C.....	768	678	580	540
	Ridge Springs, S. C...	759	669	571	531

From Points on the Port Royal & Augusta R. R.

	To	New York.	Phila- delphia.	Balti- more.	Wash- ington.
From	Ellenton, S. C.....	823	733	635	595
	Hattleville, S. C.....	833	743	645	605

From Points on the S. C. Ry.

	To	New York.	Phila- delphia.	Balti- more.	Wash- ington.
From	Williston, S. C.....	840	750	652	612
	Bamberg, S. C.....	863	773	675	655
	Graham, S. C.....	858	768	670	630
	St. Mathews, S. C....	755	665	567	527
	Elko, S. C.....	843	753	655	615

From the following Points.

	To	New York.	Phila- delphia.	Balti- more.	Wash- ington.
From	Augusta, Ga.....	801	711	613	573
	Columbia, S. C.....	717	627	529	489

On the basis of the average distance of these stations on each road, respectively, from the cities named, the rates per ton per mile under the old and the new rates are as follows :

From	To New York.		To Philadelphia.		To Baltimore		To Washington.	
	Old	Present	Old	Present	Old	Present	Old	Present
	Rate	Rate	Rate	Rate	Rate	Rate	Rate	Rate
	Cents	Cents	Cents	Cents	Cents	Cents	Cents	Cents
Lewiedale.....	.985	.958	1.028	.998	1.065	1.030	1.147	1.108
Summit.....								
Leesville .....								
Johnston .....								
Ridge Springs								
Batesburg.....	1.038	.966	1.084	1.002	1.125	1.031	1.200	1.100
Ellenton .....								
Hattievile ....								
Williston.....	1.042	.866	1.087	.890	1.129	.902	1.196	.955
Bamberg.....								
Graham .....								
St. Mathews...								
Elko .....	.923	.898	.956	.928	.978	.962	1.047	1.012
Augusta.....								

The following table gives the average receipts per ton per mile and estimated cost of carrying a ton a mile for the years ending June 30, 1888, 1889 and 1890, as reported to this Commission by the roads named therein.

AVERAGE RECEIPTS PER TON PER MILE AND ESTIMATED COST OF CARRYING ONE TON ONE MILE FOR ROADS NAMED FOR THE YEARS ENDING JUNE 30, 1888, 1889 AND 1890.

Name of Road.	1888.		1889.		1890.	
	Aver- age receipts	Esti- mated cost	Aver- age receipts	Esti- mated cost	Aver- age receipts	Esti- mated cost
	Cents	Cents	Cents	Cents	Cents	Cents
South Carolina Railway	1.894	1.223	1.685	1.227	1.615	.885
Charlotte, Columbia & Augusta Railroad (1).	.....	.....	.. ...	.....	.....	.....
Richmond & Danville Railroad.....	1.710	1.032	1.476	1.022	1.310	1.090
Port Royal & Western Carolina Railway.....	3.662	2.729	3.522	3.109	3.108	3.352
Pennsylvania Railroad.	.723	.509	.685	.486	.661	(2).457

(1) No separate report filed. Included in report of the Rich.&Danv.R. R. Co.  
(2) As computed by this office. Returned by Pennsylvania R.Co. as .462cent.

Interstate Commerce Commission,  
July 27, 1892.

4. On shipments to New York there is a terminal charge by the delivering road of 7 cts. per hundred pounds, for handling in the harbor and making deliveries within the lighterage

limits. There also appears to be a charge of 1 cent per hundred pounds by the initial road for gathering up the melons. These charges are deducted from the through rate and the remainder is divided between the connecting roads. The rate sheets filed by the defendants do not show these terminal charges but only the through gross rates.

5. Twelve hundred melons of average weight of 20 lbs. per melon, are estimated as a carload. The better grades average about  $23\frac{1}{2}$  pounds. Few, if any, under 20 pounds, are shipped. The minimum carload during complainant's shipments in 1889 was fixed by the roads at 24,000 pounds, and any excess charged for at the carload rate per hundred pounds. The cars are not loaded to their full capacity, as that would be detrimental to the bottom layer of melons and render them unsalable. A car of ordinary size loaded to the extent practicable will carry from 24,000 to 26,000 pounds.

6. The roads have special melon trains and place cars on the side tracks where they are loaded with melons by the shipper or owner. The cars furnished for this purpose are for the most part box-cars and the shipper has to prepare them by laying straw on the bottom to the depth of 8 or 10 inches as a bed for the melons and by sealing the door horizontally with strips of lumber 2 or 3 inches apart. Melons are perishable freight and begin to deteriorate two or three days after they mature, but this depends to a great extent upon the weather. They are also liable to injury from the bumping of the cars against each other. The transportation of melons by the road is at the owner's risk; but the roads sometimes have to sell the melons to pay freight charges, and when they do not bring enough for that purpose it is the loss of the roads. As a security against this loss, the roads, whenever they deem it advisable, require prepayment of freight. The roads do not contract to make melon shipments within a specified time, but publish schedules for their melon trains and the understanding is that quick time and prompt delivery are to be made. The schedule time on the lines of defendants during complainant's shipments in 1889 appears to have been 49 hours from Augusta and  $41\frac{1}{2}$  hours from Columbia to New York, and proportionately less for intermediate points. This gives a speed of from

16 to 18 miles per hour, and is a reasonable time for the performance of the service by the roads. There is evidence tending to show that melon trains are frequently delayed much beyond the schedule time and that the freight has been greatly injured in this way; but there is no reliable data as to the amount of the damage thus sustained, and it does not appear what was the cause of the delay or whether it was avoidable by reasonable diligence on the part of the roads. Cars employed in transporting melons to the east bring return loads, but to what extent is not satisfactorily shown.

7. There is a charge of 10 per cent. commission by the commission merchant on the sale of melons and a cartage and handling charge, amounting to \$8 or \$10 per car, at Baltimore and Philadelphia. In New York the melons are usually sold directly from the dock and no expense is incurred for cartage or handling. A charge of \$2 per car is also made for "passing" the melons from the car to the vehicle by which they are carried to their destination. All these expenses are paid by the shipper. There is no evidence as to the cost of the raising of melons and placing them on board the cars for shipment. An average carload of melons at shipping point is estimated to be worth taking the season through, from \$50 to \$75, and they sell in the eastern markets, according to the testimony of the complainant, at from 12 to 16 cts. per melon; another witness testifies that good melons bring in New York from 14 to 25 cents per melon.

A carload of melons generally loses from 100 to 150 by reason of their becoming unsalable in transit. The testimony was to the effect that the melon business had not proved very profitable to the shipper. The markets are sometimes overstocked, and, the melon being perishable, if it does not reach the market at the right time, cannot be held over and has to be sold for anything it will bring. The business of raising and shipping melons appears however, to have grown steadily; in 1887, it is stated, there were shipped over the South Carolina Railway about 500 carloads—in 1888, about 1,000 carloads, and in 1890, nearly 2,200 carloads. It is to the interest of the roads to encourage the melon industry and they appear to have done so; the cars placed upon the side track for receipt



of the melons are allowed to remain there for some time for the convenience of the shipper and telegraphic information as to the state of the market and other facilities are furnished by the roads free of cost to persons engaged in the business.

8. The melon shipping season extends through July and August. During those months in 1889, the complainant's partial statement and that furnished by the Richmond & Danville Company for the Charlotte, Columbia & Augusta road, show 121 carloads shipped by him. Of these 114 weighed (according to those statements) 24,000 lbs., six weighed 30,000, and one 35,750 lbs. The complainant states that during the season of 1887, 1888, 1889 and 1890, he shipped between four and five hundred carloads of melons.

9. The complainant testifies that for carloads of lighter weight he was charged during the season of 1889, the same or a greater amount of freight than other parties were charged on two or more carloads of greater weight. There is, however, no satisfactory proof as to the weights of the carloads referred to. The evidence also fails in our opinion to sustain the charge that the defendants willfully "rendered untrue and false weights." As to overcharges, it appears that some of small amount were made by the road, but no complaint was ever made of them by the complainant and the attention of the railroad officials was not called to them. The complainant appears to have attributed the overcharges to "mistake in rates." In one instance, an offer was made after the institution of this proceeding to refund the amount of one of the alleged overcharges, but the complainant refused to accede to the offer. It is also shown that in some instances, the complainant was charged for less than the actual weight of his carloads. The complainant's method of ascertaining the weight of melons was to have an expert estimate the weight of such melons as he could and weigh those as to which he was in doubt.

10. As showing that the defendants "changed their rates without giving the notice required by law," the complainant introduced in evidence a rate sheet of the "Richmond & Danville Despatch" dated July 13, 1888, No. 1266, superceding one dated July 6, 1888, No. 1261. The through rates on both



these rate sheets are, however, the same, and there is no difference between them except as to the divisions between the connecting roads of the through rate to Baltimore. A rate sheet signed by the general freight agents of the Richmond & Danville Railroad and the South Carolina Railway, dated July 12, 1889, and taking effect July 15, 1889, was also placed in evidence; but it does not purport to supercede any former rate sheet and appears to have only established melon rates to certain points on the North Carolina and other railroads to which they had not been previously announced. The changes in the rates on melons appear to have been for the most part (if not entirely) reductions and they were made prior to the melon shipping season. The complainant was duly advised as to the rates each season and no injury is shown to have resulted to him or any other shipper from a want of notice. There is no positive or other satisfactory proof that the rates were not in fact posted as required by law and none whatever of a willful neglect on the part of any of the defendants of their duty in this respect. *Railroad Commission of Florida v. Savannah, F. & W. R. Co.* 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688.

11. In letters dated, respectively, Dec. 3, and Nov. 24, 1888, the complainant wrote the General Freight Agent of the Richmond & Danville Road, expressing the hope that rates would remain as they were and that the same treatment as in the past would be accorded to melon shippers. At that time, the rates in force were about the same as those now complained of being (as shown by the rate sheets of July 6 and July 13, 1888) per carload to Washington and Baltimore \$88.00, to Philadelphia \$96.00 and to New York \$102.00. By rate sheet of June 20, 1888, the rates were very much higher, being 51 cents per hundred pounds, or \$122.40 per carload, to New York. In a subsequent letter, dated Feb. 26, 1889, the complainant, while referring to the "liberal treatment" the roads had accorded shippers of melons during the past season asked for a reduction of from 10 to 15 per cent.

#### CONCLUSIONS.

The claim of the complainant for an order of reparation calls in question the reasonableness of the rates charged on

complainant's shipments in July and August, 1889, and which were in force when this proceeding was instituted. As bearing on this question, the complainant alleges that 32,000 lbs. would be a just and fair minimum carload weight to be allowed on melons and not 24,000 lbs., the weight established by the defendants. The complainant, however, testifies (and the other evidence is to the same effect) that from 24,000 to 26,000 lbs. is the proper weight of melons to be loaded in a car and it appears that a greater weight would result in detriment to the lower layers of the melons. The smallest melons shipped, moreover, do not as a rule weigh under 20 lbs., and as 1,200 melons is a carload in numbers, 24,000 lbs. would seem to be the natural minimum carload weight. In any event the real question is as to the reasonableness of the rates in themselves.

These rates, as alleged in the complaint, yielded on a carload of 24,000 lbs. from stations on South Carolina Railway, \$103.92 to New York, \$96.72 to Philadelphia, and \$87.12 to Baltimore and Washington. According to complainant's testimony, the average market price of a melon in New York is about 14 cents. As there is a loss of from 100 to 150 melons in transit, the carload on reaching market would not contain on an average more than 1,075 salable melons, which at 14 cents per melon, would sell for \$150.50. Deducting from this the 10 per cent. commission on sales, \$15.05, and the freight to New York, \$103.92, there is left a balance of \$31.53 for the shipper. This is less than the amount (from \$50.00 to \$75.00 per carload), which, according to the testimony, the carload would sell for at point of shipment. The only other witness as to the market price in New York (a witness for complainant) states that good melons sold there at from 14 cents to 25 cents per melon. This gives an average of  $19\frac{1}{2}$  cents per melon and at this price a carload shipped to New York, would net the shipper after deducting freight charges and commissions, \$84.74. It is not reasonable that shipments would be made of a commodity which is worth more to the shipper at the point of shipment than it yields him in the market shipped to, and we are of the opinion that the market price in New York as testified to by the witness last referred to is more nearly correct than that given by complainant. There is no evidence as to the market

price of melons at other points. At Baltimore and Philadelphia the shipper has to pay for cartage and hauling as appears from our statement of facts.

The evidence in this case is materially deficient in furnishing no data whatever as to the cost of raising melons (embracing interest on investment, labor and other items of such cost), and the expense of conveying them to the cars and preparing the latter for their safe transportation.

The complainant in his brief invokes the rule laid down by us in the case of *Delaware State Grange Patrons of Husbandry v. New York P. & N. R. Co.*, 3 Inters. Com. Rep. 561, 4 I. C. C. Rep. 605, that "rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier for transportation, and the average market price the freight will command, or, as it is termed, the commercial value of the property." In the absence of any evidence showing the "antecedent cost of the traffic as delivered to the carrier" and in view of the meagre and unsatisfactory evidence as to the "average market price of melons," it would seem impracticable to apply that rule in this case as now presented to us.

In passing upon the lawfulness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered as well as the result of the business to the shipper or producer of the traffic. Melons being perishable, rapid transit and prompt delivery are of the first importance and where the carrier renders this special service a higher rate than for the carriage of ordinary freight is warranted. *Delaware State Grange Patrons of Husbandry v. New York, P. & N. R. Co. supra.* The defendants furnish special trains for the melon traffic and undertake to make quick movement and speedy delivery. It appears that in numerous instances they have, from some cause not stated, failed in this respect to the damage of the shipper. This failure, when avoidable by the exercise of reasonable diligence on their part, would seem to constitute a ground of action for damages in the courts. If, because of such default on the part of the carrier, the rate should be, at the shipper's request, reduced to such a rate as would be reasonable in the absence of rapid transit and prompt delivery, the carrier would be relieved of the duty of rendering

this special service, so essential to the melon traffic. It would seem, therefore, to be to the interest of the shipper not to seek a reduction of rates on the ground of a failure of duty on the part of the carrier, but to endeavor to enforce that duty by proper proceedings in the courts. A reduction of rates by us would, as we have shown, tend to a contrary result.

By a comparison of the table in our statement of facts showing the rates per ton per mile under the old as well as the present rates from the several shipping points to New York, Philadelphia, Baltimore and Washington, with that giving the average receipts per ton per mile on freight in general and the estimated cost of carrying a ton a mile, for the three years, 1888, 1889 and 1890, as reported by the roads, it will be seen that those rates per ton per mile are less than the average receipts per ton per mile on all the roads named except the Pennsylvania, and are also less than the estimated cost of carrying a ton a mile on most of them. There was no evidence introduced as to the actual cost to the roads of melon transportation.

The complainant contends that the reduction in rates since this proceeding was commenced is in the nature of an acknowledgement that the rates as they existed before the reduction were excessive. This does not necessarily follow. On an examination of the tables of rates complained of and present rates, it will be seen that the main reduction is in the rates from stations on the South Carolina Railway and the small roads tributary to it—the reduction from those stations being 7 cents per hundred pounds, while from stations on the other roads it is only from 1 to 3 cents. It will also be seen from the table relating to that matter, that the estimated cost of carrying a ton a mile on the South Carolina Railway has decreased from 1,227 cents in 1889 to .885 cents in 1890. A decrease in cost of transportation and the increase shown to have taken place in the volume of the melon traffic might authorize and account for a reduction in rates. The rates complained of appear to have been less than those at times previously in force and the complainant does not appear, when he wrote the letters referred to in our statement of facts, to have considered such prior rates excessive.

We have been considering the reasonableness of the rates in force during the complainant's shipments in 1889 as bearing upon the claim of complainant for an order of reparation. We do not feel justified under the state of proof in issuing such order based on the ground that those rates were excessive and unlawful.

Under the present rate of 36 cents per hundred pounds the freight on a carload of 24,000 lbs. from stations on the South Carolina Railway to New York is \$86.40. Taking the complainant's statement of the market value of melons in New York and deducting the above freight and 10 per cent commissions, there will be left \$49.05 per carload. On the testimony of the other witness as to such market value, the balance after making those deductions will be \$102.80. In order to find the net profit to the producer or shipper, there must be subtracted from the balance so ascertained, the cost of raising the melons, conveying them to and loading them in the cars and preparing the latter for their transportation. Of this cost, as before stated, we have no proof. The complainant claims that a rate somewhat lower than that now in force should be made, but we are not prepared, on the facts disclosed by the record, to sustain this claim. In view of the absence of any evidence whatever as to the cost incurred by the producer or shipper in raising the melons and otherwise as above stated prior to the commencement of the transit, and of the other matters bearing on this question to which we have adverted, we do not feel justified in ordering a greater reduction of the rate complained of than that already made by the defendants since the commencement of this proceeding. It may be noted in this connection that the complainant in his letter of February 26, 1889, to the General Freight Agent of the Richmond & Danville Road, asked for a reduction on rates of from 10 to 15 per cent. The present rates from stations on the South Carolina Railway are about 15 per cent. less than those in force at that time. The rates specifically set forth in the complaint as exorbitant are those then in force from stations on the South Carolina Railway.

As to overcharges, or charges in excess of the published or agreed rates, and false weighing, we deem it unnecessary to add anything to what we have said in our statement of facts.

*The complaint must be dismissed.*

**THE BOARD OF TRADE OF CHATTANOOGA V. THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY; THE NORFOLK & WESTERN RAILROAD COMPANY; THE OLD DOMINION STEAMSHIP COMPANY; THE WESTERN & ATLANTIC RAILROAD COMPANY; THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA; THE GEORGIA RAILROAD COMPANY; THE OCEAN STEAMSHIP COMPANY OF SAVANNAH; THE SOUTH CAROLINA RAILWAY COMPANY; THE CLYDE STEAMSHIP COMPANY; THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY; THE BALTIMORE & OHIO RAILROAD COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PENNSYLVANIA COMPANY; THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY; THE NEW YORK & NEW ENGLAND RAILROAD COMPANY AND THE DELAWARE & HUDSON CANAL COMPANY.**

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**Complaint filed, April 9, 1890.—Answers filed, May 5 to June 20, 1890.—Heard at Chattanooga, Tennessee, November 12, 1890.—Briefs filed, January 2 to January 20, 1891.—Decided, December 30, 1892.**

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- 1. Upon complaint alleging that rates on traffic from New York and other Atlantic seaboard points to Chattanooga are unreasonable and greater for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Memphis and Nashville.**

***Held,* That defendants are justified by the existence of water competition of controlling force in charging less on such traffic for the longer distance to Memphis, but that no such competition exists for such traffic to Nashville, and any greater charge for the transportation of like kind of property from said seaboard points for the shorter distance to Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the fourth section of the Act to regulate commerce.**

Defendants ordered to cease and desist from making such greater charge to Chattanooga, with leave to file application for relief under the proviso clause of the fourth section within a specified time. *Ga. R. R. Com. v. Clyde SS. Co. et al.*, 4 Inters. Com. Rep. 120; 5 I. C. C. Rep. 324, cited and affirmed.

2. One transportation line cannot be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it.
3. When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered.

*G. C. Connor, J. A. Moon and E. S. Daniels* for complainant.

*W. M. Baxter*, for the East Tennessee, Virginia & Georgia Railway Company.

*A. Pope*, for the Norfolk & Western Railroad Company, and Old Dominion Steamship Company.

*Lawton & Cunningham*, for the Central Railroad & Banking Company of Georgia and the Ocean Steamship Company of Savannah.

*Shepherd & Cist*, for the Cincinnati, New Orleans & Texas Pacific Railway Company.

*Clarke & Brown*, for the Nashville, Chattanooga & St. Louis Railway Company.

#### REPORT AND OPINION OF THE COMMISSION.

**KNAPP, Commissioner :**

The complainant, an association of merchants and manufacturers of the city of Chattanooga, Tennessee, incorporated under the laws of that state in the name of "The Board of Trade of Chattanooga," alleges that its objects, among others, are "to study the workings of our" (the Chattanooga's) "system of transportation, upon which our" (Chattanooga's) "commercial prosperity depends so largely, and to endeavor to remedy, by all proper means, the defects and abuses existing therein;" and that the defendants, as common carriers engaged in interstate commerce, "separately and jointly, have been and are



now transporting property and participating in *through rates* of freight charges for transporting the same," from Boston, New York, Philadelphia and Baltimore, designated as Eastern Seaboard points, to Nashville, Memphis and Chattanooga, in the state of Tennessee.

The complaint charges in substance:

1. That the through rates to Chattanooga participated in by the defendants are unjust and unreasonable in themselves, (as well as relatively to those to Nashville and Memphis) and therefore, in violation of section 1 of the Act to regulate commerce.

2. That Nashville, Memphis and Chattanooga compete for business in the same territory; that the through rates so charged and participated in by defendants are much lower to Nashville and Memphis than to Chattanooga "for transporting like property from said seaboard points under the same or substantially the same circumstances and conditions;" and that the defendants are thus guilty of unjust discrimination against Chattanooga, in violation of section 2 of the Act to regulate commerce, and of giving an undue preference or advantage to Nashville and Memphis and subjecting Chattanooga to an undue prejudice or disadvantage in violation of section 3 of said Act.

3. That the defendants are guilty of a violation of section 4 of the Act to regulate commerce, in that under said through rates they charge and receive a greater compensation for the transportation of the "like kind of property, under substantially similar circumstances and conditions" from said eastern seaboard cities to Chattanooga than they charge and receive for such transportation over their several lines *through* Chattanooga to Nashville and Memphis, which latter cities are respectively 151 miles and 310 miles farther from said eastern seaboard points.

In proof of these allegations, complainant refers to the tariffs on file with the Interstate Commerce Commission, and gives tables illustrating the alleged discriminating and otherwise illegal character of said rates.

The prayer of the complainant is, that, after hearing and investigation by this Commission on the notice, "an order be



made commanding the defendants to cease and desist from said violations of the Act to regulate commerce, and that said order require them to transport property to Chattanooga from eastern seaboard points at such rates as this Commission may decide to be just and reasonable," and "to cease transporting property from eastern seaboard points to the cities of Nashville and Memphis at lower rates of freight charges than they charge and collect for transporting like property to the city of Chattanooga; and for such other and further order as the Commission may deem necessary to grant relief to the merchants and manufacturers of Chattanooga."

All of the defendants filed answers to the complaint except the Pennsylvania Company, The Old Dominion Steamship Company and the Clyde Steamship Company.

Some of these answers put in issue the allegation of complainant that Nashville, Memphis and Chattanooga compete for business in the same territory, and the answer of the Norfolk & Western Railroad Company sets up that "there are natural causes between Nashville and Chattanooga, or between Cincinnati and Chattanooga, in the shape of ranges of mountains and streams that divide the territories naturally, and as a consequence, commercially, that absolutely prevent under any reasonable conditions a growth of trade to any extent northward from Chattanooga in the direction of Nashville for any considerable distance along the line of the Nashville, Chattanooga & St. Louis Railway, or northward in the direction of Cincinnati along the line of the Cincinnati Southern Railway; that the character of the productions of the territories named, the interdependence of the communities in said sections one upon another, and in their relations towards the larger markets that lie in the direction of Ohio, Kentucky or Indiana, as well as the community of interest between the cities of Nashville or Cincinnati and the towns along the respective lines of railway named, are sufficient to determine or control the trade of said communities toward said cities or others adjacent thereto." This answer also contains the following statement: "The adjustment of rates between eastern cities and Chattanooga in a uniform measure with those for all important points in interior Alabama and Georgia, was because of the necessity

that existed, commencing in 1868, for harmonizing the various commercial interests of said towns and cities, and, as the result of such effort, a system of rate adjustment was indicated in 1874, under the auspices of an association then formed, called the Southern Railway & Steamship Association, which, first embracing the cities of Atlanta, Chattanooga, Montgomery, Selma and Rome, became enlarged in its area as other railway lines were built and as the freight interests of other towns entered became enlarged. The cities or towns taking rates uniform with Chattanooga at this time are Anniston, Ala., Athens, Ga., Atlanta, Ga., Birmingham, Ala., Cedartown, Ga., Columbus, Ga., Dalton, Ga., Montgomery, Ala., Eufaula, Ala., Rome, Ga., Selma, Ala., Meridian, Miss., Opelika, Ala., Talladega, Ala., and possibly others. The natural conditions that exist, as well as the transportation facilities that are enjoyed by each of these towns, make them more or less competitive with each other, and a large portion of them competitive with Chattanooga, those more particularly competitive with Chattanooga being Anniston, Ala., Atlanta, Ga., Birmingham, Ala., Rome, Ga., and Dalton, Ga., and taking New York as a representative point, the rates to said points are as have been named by the complainants, viz, \$1.14, \$.98, \$.86, \$.73, \$.60 and \$.49, for the six figured classes of merchandise traffic; and your respondent believes that the competition for business and the interchange of traffic one town with another or one territory with another, in which Chattanooga is most largely if not wholly interested, is with the towns named or with the territories that said towns likewise reach, and that it is in reference to rate adjustment in connection with these towns that the efforts of the complainants should be directed."

It is expressly admitted in most of the answers, and not denied in any, that the through rates from said eastern seaboard cities are higher to Chattanooga than to Nashville and Memphis; but it is claimed that this is not in violation of any of the provisions of the Act to regulate commerce, because it is alleged, the rates to Nashville and Memphis are forced upon the defendants by actual water competition of controlling force at both said points, and the transportation thereto from eastern seaboard cities is not under substantial

circumstances and conditions as that to Chattanooga. It is further denied that the rates to Chattanooga are unjust and unreasonable in themselves.

The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad, The Central Railroad & Banking Company of Georgia and the Ocean Steamship Company of Savannah, allege that among other circumstances which justify them in charging less rates for the longer haul through Chattanooga to Memphis and Nashville than are charged to Chattanooga, is the fact that, while the *transportation* is through Chattanooga the *rates* to Memphis and Nashville from said seaboard points are made through Cincinnati. It is also claimed by some of the defendants that the through rates to Memphis and Nashville are not made under a joint prorating arrangement, but are made by adding the regular tariff rate under the Official (or Trunk Line) Classification to Cincinnati to the rates of the railroads south of that point, and that for said last named rates said roads south of Cincinnati are alone responsible.

On the part of the Nashville, Chattanooga & St. Louis Railway Company it is alleged, that said company "neither owns nor operates any railroad running into Chattanooga except the one from Nashville," and said company denies that it has anything to do "in fixing the rates or participating therein on freight shipped from any of the named points to Chattanooga," but it admits "that it takes freight destined for Nashville of its codefendants at Chattanooga from said named points at through rates and participates therein with its codefendants."

The New York, Lake Erie & Western Railway Company alleges "that the freight and traffic sent by it go direct to Memphis and Nashville *via* Louisville and do not pass through Chattanooga, and, therefore, that the Board of Trade of Chattanooga has no legal ground of complaint against it under the Act to regulate commerce, as it has no control whatever of the rates to Chattanooga."

The Cincinnati, New Orleans & Texas Pacific Railway Company avers that it is operating as lessee thereof the Cincinnati Southern Railway, extending from Cincinnati to Chattanooga,

and “that the city of Nashville is not on the defendant’s line of railway and that it does not operate or control any part of any through route from said eastern seaboard points to Nashville.”

The Central Railroad Company of New Jersey denies “that it makes through rates from any seaboard points named in the complaint to Chattanooga, Memphis and Nashville.”

FACTS.

1. The complainant is an association of merchants and manufacturers of the city of Chattanooga, Tennessee, incorporated under the laws of that state for the purposes named in the complaint, and the defendants, The East Tennessee, Virginia & Georgia Railway Company, The Norfolk & Western Railroad Company, The Old Dominion Steamship Company, The Western & Atlantic Railroad Company, The Central Railroad & Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans & Texas Pacific Railway Company (as lessee of the Cincinnati Southern), The Baltimore & Ohio Railroad Company, The Delaware & Hudson Canal Company, The Pennsylvania Company, The Pennsylvania Railroad Company, The New York, Lake Erie & Western Railroad Company, The New York & New England Railroad Company, and the Nashville, Chattanooga & St. Louis Railway Company, are severally common carriers engaged in interstate commerce as parts of through lines and under joint tariffs of rates to Chattanooga, Nashville & Memphis, Tennessee. There is no proof controverting the denial of the Central Railroad Company of New Jersey that it is so engaged.

2. The following are the through rates from New York and Boston to Chattanooga, Nashville and Memphis, respectively :

Classes:- -	1	2	3	4	5	6
To Chattanooga .....	114	98	86	73	60	49
To Memphis, 310 miles farther	100	85	65	45	38	35
To Nashville, 151 miles farther	91	78	60	42	30	31

It thus appears that the rates from New York and Boston are less to Nashville than to Chattanooga, on the six numbered

classes respectively, by 23 cents, 20 cents, 26 cents, 31 cents, 24 cents and 18 cents: and less to Memphis than to Chattanooga by 14 cents, 13 cents, 21 cents, 28 cents, 22 cents and 14 cents. These differences prevail in favor of Nashville and Memphis on all goods transported to those cities from eastern seaboard points through Chattanooga—the distance to Nashville being 151 miles, and to Memphis 310 miles, farther than to Chattanooga.

3. There are a number of routes by which traffic from the eastern seaboard is carried to Nashville. These may be separated into two classes or groups; one consisting of the lines passing through Chattanooga, the other of the lines passing through Cincinnati, Louisville, Evansville and possibly other points north of Chattanooga. How the aggregate through business to Nashville is divided between these different groups was not very definitely shown, but it is fairly inferable from the evidence that the lines through Chattanooga carry fifty to sixty per cent. of the total tonnage. There was considerable disagreement as to whether the through rate to Nashville (with reference to the routes *via* Cincinnati, Louisville, etc.) is prorated on the whole mileage, or made up by adding certain arbitrary amounts to the “trunk line” rates from the east to these intermediate points respectively.

The rates from New York and Boston to Cincinnati are:

1	2	3	4	5	6
65	57	44	30	26	22

From the same points to Louisville the rates are:

1	2	3	4	5	6
75	65	50	35	30	25

And to Evansville:

1	2	3	4	5	6
83	72	55	39	33	28

The above charges are imposed for carrying the traffic to these towns respectively, whether the transportation terminates there or is continued to Nashville; in other words the lines east of these points receive the same compensation in either case. The through rate to Nashville, hereinbefore stated, is

less than the local rates from these several places plus the trunk line rates from the seaboard to each of them respectively, that is, less than the amount produced by adding the locals from Cincinnati, Louisville or Evansville to the eastern rates severally applied to those towns. For this reason the Nashville rate may be said to be made by "arbitrary" additions to the trunk line rates to the intermediate points. On the other hand a comparison of these additions with the distances to Nashville from the several points mentioned shows that they give substantially the same rate per ton per mile in each case—one and seven-tenths cents—as the trunk line rate per ton per mile east of those points. Practically, therefore, the Nashville rate by the several routes now under consideration is an extension of the trunk line rate to that point, the total charge being divided between the several carriers in nearly exact proportion to the mileage operated by each. This being the material fact, the origin of the rate, or the proper name by which to describe it, can be of no importance. As any differences between the several routes in this group appear to be insignificant, their relation to the controversy will be sufficiently shown by taking one of them as an illustration, and accordingly the route *via* Cincinnati will be hereafter used for that purpose.

The following comparison shows the difference between the local rate from Cincinnati to Nashville and the amounts added to the trunk line rate to the former place to make the through rate to the latter.

	1	2	3	4	5	6
Local Rate Cln. to Nashville	53	48	39	31	25	25
Additions to	1	2	3	4	5	6
Trunk Line Rate to Cincinnati	26	21	16	12	10	9

The seaboard traffic which is carried to Nashville *through Chattanooga* reaches the latter place by several different routes. The most important of these appears to be the East Tennessee, Virginia & Georgia Railway with its eastern connections by rail and water. The water portion of this route is by the vessels of the Old Dominion Steamship Company from New York to Norfolk, where they connect with the Norfolk & Western

Railroad which extends to Bristol, Tennessee, the eastern terminus of the East Tennessee, Virginia & Georgia; the rail portion of this route consists of the Pennsylvania system, and possibly other lines, reaching Roanoke, Va., on the main line of the Norfolk & Western by way of the Shenandoah Valley. All traffic over this route passes through Knoxville, Tenn., the rates to which point are about the same as to Memphis.

Another route is by the Clyde Steamship Company to Charleston, connecting at that port with rail lines running through Augusta and Atlanta; and a third route is by the Ocean Steamship Company to Savannah, and thence by rail through Macon and Atlanta. There is no testimony in the case indicating the relative portion of Nashville traffic *via Chattanooga* which passes by either of these routes, but our understanding is that the greater portion of it goes by the one first above described.

The traffic from Atlantic seaboard points to Memphis is also divided between several independent routes. One of these general routes is by the all rail lines through Cincinnati, Louisville, Evansville, etc. The Memphis through rate is the trunk line rate to Cincinnati, etc., plus certain additions which are less than the local rates from those points to Memphis. The difference between such local rates and these additions appears by the following statement:

	1	2	3	4	5	6
Local Rate Cin. to Memphis	75	60	55	40	35	30
Additions to	1	2	3	4	5	6
Trunk Line Rate to Cincinnati	35	28	21	15	12	13

A comparison of these additions with the distances from Cincinnati, etc., shows that the Memphis through rate, like the Nashville through rate, is in effect an extension of the trunk line rate to Memphis, the total charge being divided between the different carriers in proportion to their respective mileage.

A second route is the one through Chattanooga, formed by the East Tennessee, Virginia & Georgia Railway with its eastern connections and requires no further description.

Two other routes are those already mentioned by way of Charleston and Savannah respectively. The Memphis traffic by the last named routes does not necessarily go through



Chattanooga, but may take a shorter course from Atlanta by way of Birmingham.

In addition to these is the ocean route to New Orleans, and thence to Memphis by rail or by the Mississippi river.

There are likewise several routes by which shipments terminating at Chattanooga reach their destination. A portion of this traffic goes by the trunk lines to Cincinnati, and thence by the Cincinnati Southern Railroad, now controlled by the Cincinnati, New Orleans & Texas Pacific Company. The through rate by this route, as in the case of Nashville and Memphis, is made by adding to the trunk line rates to Cincinnati certain amounts which represent the proportion of the total charge taken by the carrier from Cincinnati to Chattanooga. The additions so made give a considerably greater rate per ton per mile for this portion of the haul than the trunk line rate east of Cincinnati, but they are at the same time materially less than the local rates between those points. The precise difference appears by the following statement :

	1	2	3	4	5	6
Local Rates Cin. to Chattanooga	76	65	57	47	40	30
Additions to	1	2	3	4	5	6
Trunk Line Rates to Cincinnati	49	41	42	43	34	27

Another portion of the Chattanooga traffic goes by the route formed by the lines of the East Tennessee, Virginia & Georgia Railway and its eastern connections by rail and water hereinbefore mentioned. The other routes by which Chattanooga shipments reach their destination are those by water and rail through Charleston and Savannah respectively which have already been sufficiently described. The proportions of the through rate taken by the several lines operating the three routes last named are not disclosed by the record ; nor is there any proof showing the relative amount of Chattanooga shipments by either of the routes mentioned. Our impression, however, is that the larger portion of this traffic goes by the Cincinnati route and by the route of the East Tennessee, Virginia & Georgia Railway and its connecting lines.

There may be other routes or lines by which traffic from the Atlantic seaboard reaches Nashville, Memphis or Chattanooga,



but the foregoing are those by which the great bulk of eastern shipments is carried to these several points, and the only ones which need to be considered in this investigation. The rates to each of these towns are the same by whatever route the transportation is effected, except the rate to Memphis *via* New Orleans.

Cincinnati, Louisville and Evansville have water communication with Nashville by the Ohio and Cumberland rivers, and also with Memphis by the Ohio and Mississippi rivers, but no traffic from the eastern seaboard by way of Cincinnati, etc., reaches Nashville or Memphis by these water routes.

4. As the matter of distance is of considerable importance in one aspect of this case, the following tables are given which are believed to be substantially correct.

#### DISTANCES *via* CINCINNATI, LOUISVILLE AND EVANSVILLE.

	MILES.
New York to Cincinnati.....	757
Cincinnati to Nashville.....	295
New York to Nashville.....	<u>1052</u>
 New York to Louisville.....	 927
Louisville to Nashville.....	185
New York to Nashville.....	<u>1112</u>
 New York to Evansville.....	 986
Evansville to Nashville.....	157
New York to Nashville.....	<u>1143</u>
 New York to Cincinnati.....	 757
Cincinnati to Memphis .....	487
New York to Memphis.....	<u>1244</u>
 New York to Louisville.....	 927
Louisville to Memphis.....	377
New York to Memphis .....	<u>1304</u>
 New York to Evansville.....	 986
Evansville to Memphis.....	322
New York to Memphis.....	<u>1308</u>
 New York to Cincinnati.....	 757
Cincinnati to Chattanooga.....	335
New York to Chattanooga.....	<u>1092</u>

DISTANCES *via* CHATTANOOGA, ALL RAIL.

New York to Bristol .....	659
Bristol to Chattanooga.....	242
New York to Chattanooga.....	<u>901</u>
Chattanooga to Nashville.....	151
New York to Nashville .....	<u>1052</u>
New York to Chattanooga .....	901
Chattanooga to Memphis.....	810
New York to Memphis.....	<u>1711</u>

DISTANCES *via* CHATTANOOGA, PART WATER.

Norfolk to Bristol.....	408
Bristol to Chattanooga.....	242
Norfolk to Chattanooga.....	<u>650</u>
Chattanooga to Nashville.....	151
Norfolk to Nashville.....	<u>801</u>
Norfolk to Chattanooga.....	650
Chattanooga to Memphis.....	810
Norfolk to Memphis .....	<u>900</u>

(This does not include water distance from New York to Norfolk.)

Charleston to Chattanooga.....	448
Chattanooga to Nashville.....	<u>151</u>
Charleston to Nashville.....	599
Charleston to Chattanooga.....	448
Chattanooga to Memphis.....	810
Charleston to Memphis.....	<u>758</u>

(This does not include water distance New York to Charleston.)

Savannah to Atlanta.....	295
Atlanta to Chattanooga.....	140
Savannah to Chattanooga .....	<u>435</u>
Chattanooga to Nashville .....	151
Savannah to Nashville.....	<u>586</u>
Savannah to Chattanooga .....	435
Chattanooga to Memphis.....	810
Savannah to Memphis.....	<u>745</u>

(This does not include water distance New York to Savannah.)

The distance from New Orleans to Memphis by rail is 394 miles, and by river very much greater.

The distance from Cincinnati to Nashville by the Ohio and Cumberland rivers is about 617 miles.

5. The city of Chattanooga is in southeastern Tennessee on the river bearing the same name as the state. During the last ten years especially its growth has been extremely rapid, and it has become a manufacturing and commercial point of considerable importance. It competes for the trade of the surrounding country largely in the same territory as Nashville, and also to some extent in the same territory as Memphis. By reason of the disparity in charges on shipments from the east, in favor of Nashville and Memphis, Chattanooga is placed at serious disadvantage in this competition and its business materially lessened. The tendency of existing rates to these rival towns is to limit the area in which eastern merchandise can be profitably distributed from Chattanooga, and to impede the growth and prosperity of that city which would naturally result from the development of its wholesale trade.

Under the tariffs now in force goods may be carried from the east through Chattanooga to Nashville, and back through Chattanooga to points south and east, and there sold at lower prices than Chattanooga merchants can sell for; and this appears to have actually occurred in many instances. On a carload of first class freight, 40,000 pounds, the charges to Chattanooga, at \$1.14 per hundred, amount to \$456.00; while to Nashville, at 91 cents, the charges are only \$364.00, making a difference of \$92.00 in favor of Nashville, the longer haul by 151 miles. On fourth class freight the advantage in favor of Nashville is \$124.00 per car, and on sixth class, \$72.00. The advantage in favor of Memphis, a longer haul by 310 miles, is also large.

The proportion of the Nashville through rate charged on a ton of first class goods from Cincinnati to Nashville *via* the Louisville & Nashville Railroad, a distance of 295 miles, is \$5.20, while the proportion of the Chattanooga through rate charged from Cincinnati to Chattanooga *via* the Cincinnati

Southern Railway, a distance of 335 miles (only 40 miles farther), is \$9.80.

It is quite unnecessary to multiply examples showing the differences resulting from these relative rates in the transportation charges on eastern merchandise to these several towns, as their necessary effect in limiting the distance to which distribution from Chattanooga can be profitably effected is sufficiently obvious without further illustration.

6. As appears from tariffs on file with the Commission, the following cities and towns, among others, are grouped with Chattanooga and take the same *rail and water* rates on classified traffic, to wit: Dalton, Rome, Atlanta, Americus, Athens, Columbus, Fort Gaines and Griffin, in the state of Georgia; Huntsville, Decatur, Sheffield, Tuscumbia, Florence, Gadsden, Oxford, Talladega, Anniston, Birmingham, Opelika, Montgomery, Selma and Eufaula, in the state of Alabama; and Enterprise and Meridian, in the state of Mississippi; Of these, Dalton, Rome, Atlanta, Americus, Athens, Columbus, Griffin, Anniston, Gadsden, Oxford, Opelika and Eufaula have higher *all rail* class rates than Chattanooga—their all rail rates on the six numbered classes being as follows:

1	2	3	4	5	6
122	104	91	77	63	51

The rates to Chattanooga and the above named common points, both *rail and water* and *all rail*, are established by the Southern Railway & Steamship Association, of which the defendant lines herein are members, and all traffic to those points is governed by the classification of that Association. The traffic to Nashville and Memphis, however, irrespective of the route by which it is transported, is governed by the Official or Trunk Line classification. There may be some disadvantage to Chattanooga from this circumstance, since an article of a given class under the first named system may be in a lower class under the other system, but the injury, if any, resulting from differences of that character is not believed to be serious.

The general range of rates in the territory covered by the Southern Railway & Steamship Association is materially higher than in the territory of the Trunk Line Association.

the difference resulting mainly from the much greater volume of traffic in the latter section; and it is inevitable that difficulties should exist and complaints arise along the line of division between varying systems of classification and unlike methods of tariff construction.

7. There are no through lines by water from Cincinnati to Nashville, but a few boats are run from Cincinnati to Paducah, Kentucky, and two or three a week, carrying from six to eight carloads each, from Paducah to Nashville. Boats are unloaded and loaded again at Paducah. No eastern business of any consequence is done, and these water lines have no agents to solicit eastern trade. Their traffic is from Ohio river points. The Atlantic seaboard shipments to Nashville by way of Cincinnati are carried wholly by rail.

The lower Cumberland river, on which Nashville is situated, is navigable about nine months in the year, and boats run that number of months on an average. Many years ago, before the days of railroads, there were through lines of boats to Nashville from Cincinnati and other cities, but they have all been discontinued on account of the rates and facilities afforded by the railroads. The railroads have the advantage in time, insurance and handling. If goods were shipped from the east and sent by water from Cincinnati to Nashville, they would have to be unloaded from the cars and loaded in boats at Cincinnati, and loading and unloading would also be necessary at Paducah. A through line of boats was established and kept up with difficulty for some time after the war, but was long ago abandoned. The uncertainty of return cargoes from Nashville would apparently prevent the maintenance of such a line of boats at the present time, even if secured against a reduction in rates by the railroads.

8. The lower rates accepted by the carriers engaged in the transportation of eastern merchandise to Nashville *via Chattanooga* are not forced upon them by any water competition at the former place. In performing this service for the compensation fixed by the present tariffs, these carriers are not affected by the circumstance that water communication exists between Cincinnati and Nashville. The Nashville rate is independent of the lines operating through Chattanooga, and

those lines have no voice in determining its amount. That rate is made by the all rail carriers *via* Cincinnati, and their action is uncontrolled by the defendant lines. The competition which the latter meet at Nashville is distinctly the competition of the trunk lines and the Louisville & Nashville system whose northern termini are at points on the Ohio river which receive trunk line rates on eastern shipments. The competitors of the defendants for this Nashville traffic, therefore, are the railroads from the Atlantic seaboard reaching Nashville by way of Cincinnati, etc., all of which are interstate carriers subject to the Act to regulate commerce. These carriers established rates and united in joint tariffs from eastern points to Nashville long before the lines through Chattanooga engaged in the Nashville business. The acceptance of the rates so fixed by the rail lines *via* Cincinnati was the necessary condition upon which the lines *via* Chattanooga could compete for Nashville traffic.

As already stated, the through rate to Nashville by the Cincinnati route is made by certain additions to the trunk line rate from the east to the latter point. The amount of such additions was doubtless fixed originally with reference to the water rates between those cities, and it may be that the possibilities of water carriage have some influence in maintaining the present figures. But we are far from satisfied, and refuse to find on the evidence in this case, that there is any actual water competition for traffic from Atlantic points to Nashville, or that the Louisville & Nashville road is forced to take such traffic at the compensation now received by it, because of river communication between Cincinnati and Nashville furnishing the opportunity for such competition. The river rates between those places are now considerably lower than the rail rates, and more or less of the local traffic goes by water; but the through business from Atlantic cities, saving the time, distance and cost of breaking bulk at Cincinnati, would continue to go by rail, in our judgment, even if the disparity between land and water rates were materially greater than it is now. There might, of course, be such an advance in rail rates that shipments from the east would take the water route from Cincinnati. What amount of difference would produce that

result it is impossible to determine from the testimony: but we find that such difference might be substantially greater than it is at present without important effect upon the railroad tonnage from the east, and that the through rate to Nashville is in no sense controlled by water competition at that point, either actually encountered or seriously apprehended.

9. The situation is quite different with respect to Memphis. The defendant lines actually meet water competition at that point which is direct and to a large degree controlling. The heavy shipments from the Atlantic seaboard to Memphis go for the most part by way of New Orleans, and the carriers complained of in this proceeding make little effort to compete with the water lines on traffic of that description. At least a third of the entire volume of eastern merchandise appears to reach Memphis by ocean steamer to New Orleans, and thence by water or rail to destination. The differences between the rates on the several classes of freight from eastern cities over the routes through Chattanooga, and the rates by ocean to New Orleans and thence by the Mississippi river to Memphis, are shown by the following table:

By defendants' lines.

1	2	3	4	5	6
1.00	.85	.65	.45	.38	.35

By New Orleans and river.

	.65	.60	.45	.33	.28	.27
Differences.	.35	.25	.20	.12	.10	.08

On shipments from New York to New Orleans by ocean, and thence by rail to Memphis, the rates now in force for the several classes are 83 cents, 75 cents, 57 cents, 40 cents, 34 cents and 32 cents; also the following commodity rates, viz: on bags, bagging, soda and coffee 32 cents; on boots and shoes, dry goods, carpets, clothing and notions 68 cents; and on cotton piece goods 52 cents.

There are two steamers per week of large capacity from New York to New Orleans, and three or four lines of boats ply the Mississippi at all seasons of the year between the latter place and Memphis. Large quantities of dry goods,



staple groceries and other similar articles, which at Memphis amount to a very large tonnage, reach the wholesale dealers of that city *via* New Orleans at the rates above stated. The rail carriers from the east cannot meet these rates and do not control this class of business. Their participation in the traffic is mainly confined to the higher grades of freight, on which the advantages in time, insurance and other items compensate for the increased cost of transportation. It appears also that the East Tennessee, Virginia & Georgia Railway, and presumably the other defendants, have agreed with the steamship lines running to New Orleans, and their connecting carriers to Memphis, upon the present differentials in favor of the New Orleans route to that destination; and the fact of such an agreement to prevent ruinous rate cutting indicates with much force the existence and positive influence of water competition for the carrying trade to that town. The apparent effect of these differentials is to give to the water routes a large share of the heavy and bulky traffic, especially the coarser and cheaper goods of general consumption at all periods of the year, while the lines operated by the defendants transport the greater portion of the more valuable commodities embraced in the higher classes.

It is possible, also, that the obtainable rates on Memphis traffic are affected, in some measure at least, if not to a controlling degree, by the tariffs made and business secured by the rail lines reaching that point through Cincinnati. The action and influence of those lines have already been described in the findings relating to Nashville, and further statements in regard thereto can hardly be required in this connection. Indeed, there seems to be no occasion for reciting other facts bearing upon transportation charges to Memphis, because the still lower rates enjoyed by Nashville, and the greater proximity of that town to Chattanooga, present the leading issue in this investigation. An equitable adjustment of the relative rates applied to these two cities will, as it now appears, make any special consideration of the Memphis tariff practically unnecessary.

10. There is a conceded margin of profit in the rates now in force to Nashville and Memphis, with reference to the addi-

tional expense incurred in carrying eastern traffic to those destinations, but whether that margin affords reasonable compensation for the services thus rendered cannot be determined from the evidence.

### CONCLUSIONS.

The situation which we have thus attempted to describe is one of peculiar difficulty. It is easy to perceive the disadvantages which gave rise to this complaint, but the remedy that can be applied, with due regard to the rights of the carriers affected, is not readily discovered. The prejudice to which Chattanooga is subjected by reason of the lower rates of transportation to Nashville and Memphis is obvious and conceded, but how to avoid that result without unjust consequences to the defendants is an extremely obstinate problem. There are certain considerations, however, bearing upon this question which indicate the direction in which a solution is to be sought.

In the findings of fact above set forth we have stated that the rates accepted for carrying eastern traffic to Nashville through Chattanooga are not influenced by water competition at the terminal point, but that the sole competition for Nashville business from the Atlantic seaboard comes from the all rail lines reaching the same destination by way of Cincinnati. We do not see how there can be actual competition between carriers except under circumstances where the traffic for which they compete would be taken by one of them if the other were not in the field; and such competition can be controlling at a given point only to the extent that either is in a position to do the entire business if the others were unable or unwilling to engage in it. One transportation line cannot be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it. This being so, the defendants cannot maintain that there is water competition for the carriage of eastern merchandise to Nashville, because none of that traffic would reach its destination by water if the lines through Chattanooga withdrew or were excluded from the Nashville business.

Plainly, in such event, all traffic from the east to that point would be carried over the rail routes *via* Cincinnati; the water lines on the Ohio and Cumberland river would not participate in it any more than they do at present. In other words the real competitors of the defendants for this transportation are the all rail carriers reaching Nashville by way of Cincinnati, and those carriers are confessedly amenable to the Act to regulate commerce. If these views are correct they control, *prima facie* at least, the determination of this case, for the primary question involved has been recently decided by the Commission.

In a series of proceedings instituted by the Georgia Railroad Commission, we have taken occasion to review with much care the fourth section of the statute, familiarly known as "the long and short haul clause," and have given it a construction intended to have general application.

*Ga. R. R. Com. v. Clyde Steamship Company, et al.*, 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324.

The consideration which this feature of the law received in the cases here referred to, and the reasons advanced for the conclusions therein announced, will appear from an examination of the report of the Commission in those cases, made public a few weeks ago, and need not be repeated in this opinion. The proposition which distinctly applies to the present proceeding was stated with conciseness in the following language :

"The carrier has the right to judge in the first instance whether it is justified in making the greater charge for the shorter distance under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under the Act to regulate commerce. In other cases under the fourth section, the circumstances and conditions are not presumptively dissimilar, and carriers must not charge less for the longer distance except upon the order of this Commission."

This ruling is directly in point and conclusive upon the primary issue in this controversy, because the competitors of these defendants for the Nashville traffic in question are

themselves interstate carriers by rail, and subject in all respects to the Act to regulate commerce. It follows, therefore, that the carriers herein complained of which engage in the transportation of freight from the eastern seaboard to Nashville *through Chattanooga*, and publish and accept rates therefore which are lower than the rates maintained by them for like transportation to Chattanooga—a shorter haul included in the longer haul to Nashville—are acting in plain violation of the fourth section, and that the resulting discrimination against Chattanooga must be adjudged unlawful.

Upon the facts ascertained in this case and the interpretation of the statute to which we adhere, any other conclusion would be quite inconsistent. The construction placed upon the long and short haul clause in the Georgia cases was deliberately adopted, and its controlling application to the present controversy is not open to serious question. We must hold that the lower rates accorded by the defendants on shipments to Nashville are without warrant of law, and that the higher charges exacted on shipments to Chattanooga cannot be sanctioned in this proceeding.

In justice to the various parties in interest, however, it should be added that this disposition of the case is not intended to preclude the defendants from applying to the Commission for relief from the restrictions imposed by the fourth section of the Act, on the ground that the situation in which they are placed with reference to this Nashville traffic constitutes one of the “special cases” to which the proviso clause of that section should be applied.

It is stated in the foregoing findings that the present Nashville rate is prescribed by the rail lines reaching that point *via Cincinnati*, and that the defendant lines through Chattanooga have no voice or influence in determining its amount. These lines are under compulsion, therefore, to meet the rates which other carriers have established, or leave those carriers in undisturbed possession of the entire traffic. They have no alternative but to accept the measure of compensation dictated by independent rivals, or abandon the large percentage of Nashville business which they now secure. In addition to this, the geographical position of these two cities, the diverse

character and divergent courses of the several groupings of lines which connect them with the Atlantic seaboard, the varying systems of classifications by which they are severally affected, and the greater volume of traffic at the lower rates prevailing in the trunk line territory, are existing conditions which govern, to some degree at least, the transportation in question. For these conditions the carriers complained of do not appear chiefly responsible, because the lower rate to Nashville is beyond their control, and the allowance of the same rate to the shorter distance point might reduce their revenues below the limits of fair compensation. Without in any sense prejudging the case, we hold that the defendants may invoke its consideration in an appropriate proceeding.

Any such intimation, however, should not be understood as covering an implied indorsement of the present disparity in rates as between Chattanooga and Nashville, for no such inference is intended. The suggestion here made goes no further than the propriety of an unprejudiced investigation, when permission to deviate from the general rule of the statute is applied for by these carriers on account of the special circumstances by which they are surrounded.

It seems improbable that the discrimination complained of can be made less oppressive by any increase in the Nashville rate, and on that assumption the only practical relief is a reduction in rates to Chattanooga. We are aware of the difficulties attending a readjustment upon that basis, but we cannot regard them insuperable. On the contrary we firmly believe that the eastern rate to this point can be materially reduced without injustice to the defendants and without serious disturbance to the general scheme of tariff construction with which that rate is connected. Compared with rates to other points and on other lines, for similar distances and a corresponding volume of traffic, the rate to Chattanooga seems extremely liberal, to say the least; while a strong presumption of its unreasonableness is created by the voluntary action of the defendants themselves in seeking business at decidedly lower rates to points much more remote. When these carriers, for instance, charge seventy-three cents per hundred pounds on fourth class freight from New York to Chattanooga, and at the

same time carry like shipments 150 miles further to Nashville for forty-two cents a hundred, and do this not incidently but for a series of years, the belief that the higher rate is excessive becomes a positive conviction. We are familiar with the argument by which the policy of lower rates to competitive points is defended, and concede its conclusiveness in certain cases and within certain limits; but when the disparity between long and short distance charges reaches the proportions here exhibited, the inference is irresistible that the lesser rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the services rendered. As the Commission has said in another case where a similar question was considered: "the difference between the figures is too great to permit the lower charge to be justified by the rule of expediency without condemning the higher charge by the rule of reasonable compensation."

We entertain little doubt, therefore, that equity between shipper and carrier requires some reduction in the rates now enforced on Chattanooga traffic from Atlantic points, and are convinced of the necessity for such a reduction to secure relative justice between that town and Nashville. We refrain from further statement of the reasons which have induced this conclusion, as the amount to which the Chattanooga rate should be reduced will not now be decided. If the carriers engaged in Nashville transportation through Chattanooga act upon the suggestion above made, and apply for relief from the restrictive rule laid down in the fourth section, the subject can be more fully considered in disposing of that application; while if such action is not taken by them within the time allowed for that purpose, it will be the duty of the Commission to make a final order in this proceeding prohibiting higher charges on shipments to Chattanooga than are or may be accepted on like shipments to Nashville. In addition to this, it may be remarked that the complainant's case was presented on the theory that the prohibitive requirement of the statute should be strictly enforced against these defendants, while they in turn contended that the full difference now maintained between rates to Chattanooga and to Nashville was justified by the necessities of the situation. The question which may arise, if permission is

sought to depart from the general rule relating to long and short hauls, was not specially discussed. On this ground also, it would seem suitable to allow opportunity for a further hearing before fixing maximum rates on shipments to Chattanooga.

We deem it unnecessary to make any comment upon the rates in force at Memphis or give any directions in respect thereto, because, as stated in the findings, the fundamental question in this case arises between Chattanooga and Nashville, and an equitable adjustment of rates between those towns may obviate any separate consideration of the Memphis tariff.

These views lead to the following order:

For reasons stated in the foregoing opinion, it is adjudged unlawful for the defendants herein to make or accept rates on shipments from Atlantic seaboard points to Nashville through Chattanooga, which are lower than the rates made and enforced by them at the same time on like shipments to Chattanooga—a shorter distance included in the longer distance to Nashville. The defendants, therefore, are ordered and required to cease and desist from making, enforcing or receiving any higher rates for such transportation as aforesaid to Chattanooga than are or may be made or accepted by them at the same time for like transportation to Nashville.

To enable the defendants to apply for relief under the proviso clause of the fourth section of the Act to regulate commerce, this order will be suspended until the first day of February, 1893; but the same will take effect and be in force from and after that date unless such application be made prior thereto. In case such relief shall be applied for within the time mentioned, the question of further suspending this order until the hearing and determination of such application will be duly considered.

In this report and opinion all the Commissioners concur.



**THE CHAMBER OF COMMERCE OF MINNEAPOLIS, MINNESOTA, V. THE GREAT NORTHERN RAILWAY COMPANY; THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; THE NORTHERN PACIFIC RAILROAD COMPANY; THE CHICAGO & NORTHWESTERN RAILWAY COMPANY; THE CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; THE MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY; THE ST. PAUL & DULUTH RAILROAD COMPANY INDIVIDUALLY AND AS LESSEE OF THE DULUTH SHORT LINE RAILWAY; THE EASTERN RAILWAY COMPANY OF MINNESOTA.**

*Defendants.*

AND

**THE CHAMBER OF COMMERCE OF MILWAUKEE; THE INTERIOR WISCONSIN MILLERS ASSOCIATION; THE EASTERN MINNESOTA MILLERS ASSOCIATION; THE SOUTHERN MINNESOTA MILLERS ASSOCIATION; THE BOARD OF TRADE OF DULUTH, MINNESOTA; THE JOBBERS UNION OF DULUTH, MINNESOTA; THE CHAMBER OF COMMERCE OF DULUTH MINNESOTA.**

*Intervenors.*

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Complaint filed, February 3, 1892.—Joint answer filed, March 19, 1892.—Amendments to complaint allowed, March 24 to May 14, 1892.—Answer to amended complaint filed, April 15, 1892.—Petitions for leave to intervene filed and allowed, April 19 to June 21, 1892.—Hearing at Minneapolis, Minnesota, May 25-27, 1892.—Hearing at Washington, D. C., July 7-9, 1892.—Briefs filed, August 12 to September 12, 1892.—Decided, January 3, 1893.

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1. When a local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through lines are necessary parties.

2. A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys.
3. A milling town possessing great natural, acquired and improved advantages for the carrying on of that industry, and favorably situated in point of distance to a large grain producing region, is entitled to the benefits arising from its location, and carriers of grain to that point and to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy.
4. Rates on wheat from points in North and South Dakota to Minneapolis as compared with the rates charged over considerably greater distances from the same points to Duluth and adjacent Lake Superior ports subject Minneapolis millers to undue and unreasonable prejudice and disadvantage. Defendants ordered to adjust their rates on wheat from said points to Minneapolis and Duluth upon the basis of distance over nearest practicable routes.

*Messrs. Britton & Gray and Flannery & Cooke* for Complainant.

*M. D. Grover* for Great Northern Railway Company and Eastern Railway Company of Minnesota.

*J. T. Fish & Burton Hanson* for Chicago, Milwaukee & St. Paul Railway Company.

*Jas. McNaught; J. C. Bullitt, Jr., and Garland & May,* for Northern Pacific Railroad Company.

*W. C. Goudy* for Chicago & Northwestern Railway Company.

*J. H. Howe & S. L. Perrin* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

*A. H. Bright & M. B. Koon* for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

*Lusk, Bunn & Hadley* for St. Paul & Duluth Railroad Company.

*Hugh Ryan* for Milwaukee Chamber of Commerce.

*Chas. Espenschied* for Southern Minnesota Millers Association.

*Wm. W. Billson* for Board of Trade, Chamber of Commerce, and Jobbers Union of Duluth, Minnesota.

*S. A. Thompson* for Duluth Chamber of Commerce.

## REPORT AND OPINION OF THE COMMISSION.

McDILL, *Commissioner* :

The petition in this proceeding states that complainant is a corporation created and existing under and by virtue of the laws of the state of Minnesota, and that a main purpose of its organization is to advance the general prosperity and business interests of the city of Minneapolis. The other important allegations in the petition are as follows:

That the Great Northern Railway Company is a common carrier by railroad between points in North and South Dakota and Minnesota, to and from Minneapolis, Minnesota, and to and from Duluth, Minnesota, and to and from West Superior, Wisconsin, over its own line. Substantially the same allegation is made with reference to the other defendants, except the St. Paul & Duluth Railroad Company, which is stated to be a common carrier over its own line of railroad between Minneapolis and Duluth, Minnesota, and West Superior, Wisconsin.

That each and all of the defendants are engaged in the transportation of wheat and flour over their own separate lines, or in combination with the lines of each other under a common control, management or arrangement, by continuous all rail carriage from common points, or from a common belt of wheat producing territory, situate and lying southwest, west and northwest of the state of Minnesota, and in the western part of the state of Minnesota, to Minneapolis, Minnesota, or through or around Minneapolis to Duluth and other Lake Superior ports in the states of Minnesota and of Wisconsin, and thence to eastern points in combination with various eastern rail and vessel lines, and therefore subject to the Act to regulate commerce.

That the rates established and charged by defendants for the transportation of wheat from competitive and intermediate points in North and South Dakota and Minnesota to Minneapolis are unreasonable and unjust.

That by said rates as compared with rates charged by defendants from the same points to Duluth and other Lake Superior ports, Minneapolis is unjustly discriminated against

and subjected to undue and unreasonable prejudice and disadvantage, and undue and unreasonable preference and advantage is given to said Lake Superior ports.

That the rate on flour from Minneapolis to Duluth which defendants, The Great Northern, Northern Pacific, St. Paul & Duluth, and Chicago, St. Paul, Minneapolis & Omaha, have increased from five to seven and a half cents per hundred pounds is unjust and unreasonable as against Minneapolis, and in connection with the wheat rates aforesaid, subject Minneapolis to further undue and unreasonable prejudice and disadvantage. That this rate of seven and a half cents on flour from Minneapolis to Duluth, while rates on wheat are, from a large section of country, the same to both of those points, imposes upon Minneapolis flour a cost of fifteen cents for each barrel when put upon Lake Superior shipboard over and above the cost of transportation involved in the manufacture of flour at Duluth or the other Lake Superior points; and that the effect thereof is to make milling at Minneapolis unprofitable.

That the Great Northern, the Northern Pacific, the Omaha, and Duluth companies now own and control wharves, docks, elevators, lands and other facilities at Duluth and other Lake Superior ports, and are also by ownership or control or by traffic arrangements with lines of boats reaching eastern markets *via* the lakes, largely interested in developing the traffic to and from such lake ports; and that this increase in the flour rate is intended to foster and build up their interests in manifest disregard of the interests of Minneapolis.

The complainant prays that defendants be ordered to cease and desist from charging more for the transportation of wheat to Minneapolis than 75 per cent of the rate charged by them for carrying said commodity from the same points to Duluth and other adjacent Lake Superior ports, and from charging more for the transportation of flour from Minneapolis to Duluth and said other ports than  $3\frac{1}{2}$  cents per hundred pounds; or that said defendants be ordered to so adjust their charges that the rate on wheat from points of shipment to Minneapolis added to the rate on flour from Minneapolis to Duluth and said other ports shall not exceed the rates charged by them

for carrying wheat from the same points of shipment to Duluth and the other lake ports aforesaid.

For convenience, the defendant carriers will hereinafter be called by the following titles: Great Northern—for the railway company of that name; St. Paul—for the Chicago, Milwaukee & St. Paul Railway Company; Northern Pacific—for the railroad company of that name; Northwestern—for the Chicago, & Northwestern Railway Company; Omaha—for the Chicago, St. Paul, Minneapolis & Omaha Railway Company; “Soo”—for the Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Duluth—for the St. Paul & Duluth Railroad Company; Eastern of Minnesota—for the Eastern Railway Company of Minnesota.

The Great Northern, the Northern Pacific, the St. Paul, the Northwestern, the Omaha and the “Soo” Companies, filed a joint answer to the petition in which they state:—

That the Great Northern road in the direction of Lake Superior points terminates at Hinckley in Minnesota, and there connects with the Eastern of Minnesota, a line which extends from Hinckley into Superior and Duluth.

That the St. Paul does not own or control a line extending to Lake Superior points, but that it and the Northwestern reach Lake Superior points by connecting lines.

That the Duluth road does not extend east of St. Paul or west of Minneapolis, and its line between St. Paul, Minneapolis and Duluth is wholly within the state of Minnesota.

They deny that the rates demanded and collected for traffic named in the petition are unreasonable or unjust, or that they unlawfully discriminate against the wheat or milling or any industries of Minneapolis, or occasion undue preference to lake traffic under similar conditions and circumstances at Lake Superior points, and allege that rates for the carriage of wheat to Minneapolis have never been lower, at least relatively lower, than at the present time, and that for years past the rates have been relatively the same from North and South Dakota to Minneapolis and Lake Superior as at present. They also deny that the wheat, milling or business interests in Minneapolis have been injuriously affected in any way by the maintenance of existing rates.

The Omaha, Duluth, Northern Pacific and Great Northern Companies, admit that they have an interest in docks and transfer facilities at Lake Superior points; but deny that they or either of them have made and maintained rates with a view of building up the interests of Lake Superior points at the expense of Minneapolis.

They admit that the rate on flour of five cents per hundred pounds was for a time maintained, but allege that it was unreasonably low and the result of unfair competition, and deny that the rate of seven and a half cents per hundred now charged on flour from Minneapolis to Lake Superior points is unreasonable.

The joint answer states that the distances from Minneapolis to Duluth are, *via* the line of the Great Northern, 187 miles; *via* the Duluth, 153 miles; *via* the Omaha, 188 miles; and *via* the Northern Pacific, 237 miles. That the rate from Minneapolis to Duluth, though it is named as a local rate, is in fact part of a through rate on shipments destined to points east of Buffalo or to points on the seaboard. That the reduction of the rate on flour from Minneapolis to Lake Superior points while apparently a reduction of a local rate, would be in fact a reduction made for the purpose of affecting the through rate from Minneapolis to eastern points, and the practical effect of such reduction would be to fix only the proportion between Minneapolis and Lake Superior points of the through rate to New England points, Canadian points and the Atlantic seaboard.

The St. Paul Company and the Northwestern Company allege in the joint answer that along their lines between Minneapolis and Lake Michigan points there are flouring mills, which, in the aggregate, produce a quantity equal to if not in excess of the entire product of Minneapolis, and which find their principal markets at eastern points or on the seaboard. That the rates from Minnesota and North and South Dakota for the carriage of wheat to Minneapolis and Duluth are adjusted with reference to through rates to such eastern and seaboard points from Minnesota, and territory west of the Mississippi river. That the reduction of the rate on flour from Minneapolis to

Lake Superior points would necessitate a corresponding reduction of the rate from mills and points where flour is produced along the lines of the respondents last named and be injurious to such respondents, as rates now in force are so low as to be barely remunerative. That if present rates *via* Lake Michigan from other points to the seaboard should be maintained while the reduction asked by complainants is granted, milling interests at those points would suffer and in many instances be destroyed.

On the 24th of March, 1892, the complainant asked and obtained leave to amend the petition by adding the Eastern of Minnesota Company as a party respondent, and on the 14th of May, 1892, the petition was further amended by designating the Duluth Company, already a defendant to the proceeding, as "The St Paul & Duluth Railroad Company, individually and as lessee of the Duluth Short Line Railway."

The Eastern of Minnesota answered that it is organized as a railway corporation under the laws of the state of Minnesota, and has a line extending from a connection with the Great Northern at Hinckley in the state of Minnesota to West Superior in the state of Wisconsin, at which point it has a number of tracks and convenient terminal facilities. That from West Superior its trains run into Duluth in the state of Minnesota, over the tracks of other railroad companies to stations and yard tracks owned by it in Duluth. That it has a contract right to and does run its trains from St. Paul over the tracks of the Great Northern Railroad Company to Hinckley. That it runs through freight and passenger trains from St. Paul to West Superior and Duluth, and its rates and charges are in all respects just and reasonable. For further answer it adopts the joint answer filed by its co-respondents.

Various parties have been allowed to intervene, namely, the Chamber of Commerce of Milwaukee; The Jobbers Union of Duluth; The Chamber of Commerce of Duluth; The Board of Trade of Duluth; The Eastern Minnesota Millers Association representing mill owners at Winona, Wabasha, Red Wing, Hastings, La Crosse, Hokah, Houston, Minnesota City, Dundas, Northfield, Faribault, Owatonna, and Lanesboro; the



Wisconsin Milling Companies at Centralia, Watertown, Wassau, Berlin, Fond du Lac, Janesville, and Stoughton, Wisconsin; also the Southern Millers Association of Minnesota.

They claim that to give Minneapolis millers the rate of flour asked ( $3\frac{1}{2}$  cents per hundred pounds) would seriously cripple them in the prosecution of their business, discriminate against them in favor of Minneapolis, and subject them to undue disadvantage in the markets, unless a corresponding reduction in rates should be granted to them on lines over which they ship their flour.

With reference to Milwaukee and points not directly connected with the Duluth and Lake Superior route, it was claimed that the relative rates, adjusted after long discussion between Lake Superior and Lake Michigan routes, were now so arranged as to give the above named milling interests a very narrow margin of profit, and if Minneapolis secured the rate sought on flour from that city to Duluth, it would in effect drive them out of the market unless accompanied by corresponding rate reductions on flour to Chicago and the seaboard from points on the lines leading to Lake Michigan; and that present rates on flour from Minneapolis to Duluth and Lake Superior points are fair and reasonable and in proportion to other rates. It was further claimed that the prevailing rate on flour from Duluth to the seaboard being (at the time the answers were filed)  $17\frac{1}{2}$  cents per hundred pounds, the reduction asked would give Minneapolis a rate of  $21\frac{1}{2}$  cents per hundred pounds by that route; whereas the rate on flour from Minneapolis to Chicago being (at that time) ten cents, and from Chicago to the seaboard 15 cents per hundred pounds, the prevailing through rate on flour to the seaboard *via* Chicago was 25 cents per hundred pounds. The disadvantage of four cents on the hundred pounds or eight cents on the barrel of flour would, it was claimed, injure intervenors seriously, as ten cents per barrel is an unusually large profit upon the barrel of flour produced.

The Duluth Association says that local shipments of wheat from Minneapolis to Duluth are mixed and inferior grades, not used in milling, and of no benefit to the mills of Duluth; that Minneapolis is 150 miles farther from the seacoast than

Duluth ; that Minneapolis mills are unduly capitalized, are older and less thoroughly modern in equipment, are compelled to incur double cost for both steam and water equipment, and therefore are at a disadvantage as compared with Duluth mills.

As stated above the complaint in this case is three fold : 1. That wheat rates to Minneapolis are unreasonable and unjust. 2. That said rates as compared with rates from the same points to Duluth and other Lake Superior ports, subject Minneapolis to undue and unreasonable prejudice and disadvantage, and give undue and unreasonable preference and advantage to said lake ports. 3. That the rate on flour from Minneapolis to Duluth is unreasonable and unjust to Minneapolis, and in connection with the wheat rates aforesaid, subjects Minneapolis to further undue and unreasonable prejudice and disadvantage.

The specific grievance, as developed, is that the millers at Minneapolis are required to pay the same for the transportation of wheat from a large territory in North and South Dakota and Minnesota to Minneapolis as the millers at Duluth and other Lake Superior points are required to pay from the same territory to those places, although Minneapolis is considerably nearer that territory than Duluth and other Lake Superior points; that Minneapolis millers in order to get their product to Duluth and other Lake Superior points from which it goes east by water, have to pay a large additional charge for transportation; and that to the extent of this additional charge the Minneapolis millers are handicapped in competition with millers at Duluth and other Lake Superior points in the eastern and export markets.

There is no evidence to show that there are milling interests at any Lake Superior point, except Duluth, which, by reason of the existing adjustment of railway charges, enjoys an advantage over Minneapolis millers injuriously affecting the interests of the latter. It appears that there is a mill at Superior, but its capacity is not given, and it seems to have been mentioned as showing that Minneapolis is menaced, though it may not yet be actually injured, by the competition of mills

other than those at Duluth. The question of the flour rate from Minneapolis is therefore principally important in connection with the transportation of that product to Duluth.

Duluth and Minneapolis are both in the state of Minnesota. There are three rail routes connecting these cities ; one of them, the Duluth road, is entirely in the state of Minnesota and the others, the Omaha road and the Great Northern in connection with the Eastern of Minnesota, are partly in the state of Wisconsin.

The decision of the Supreme Court of the United States in the case of *Lehigh Valley R. Co. v. Pennsylvania*, 145 U. S. 192, 36 L. ed. 672, 4 Inters. Com. Rep. 87, seems to be to the effect that railway traffic beginning and ending in the same state is not under the authority of the Federal government, even though in the course of transportation it passes through another state. Where the entire transit is within the limits of a single state Federal regulation is excluded by the provisions of the Act to regulate commerce. The termination of the shipment from a point in a state at another point within the same state without the contemplation of any further movement seems, under that decision, to stamp and characterize the movement as purely state as distinguished from interstate commerce.

If, then, the transportation of flour from Minneapolis to Duluth be considered as local business, it is contended that the Commission has no jurisdiction over it. But without passing upon this question, for the reason that in the view taken of the case its determination is unnecessary, we remark that the testimony of the witnesses, the arguments of counsel, and the whole record, show that the attack upon the rate of seven and a half cents per hundred pounds on flour from Minneapolis to Duluth and adjacent ports is made on the ground that it is a part of the through rate on flour to the seaboard and interstate rates to intermediate points, yet necessary parties are absent from the complaint: moreover its justice and reasonableness could not be considered except by an investigation of the entire through rate.

The case has not been prepared and presented by the complainant in such manner as to enable the Commission to determine this question. We desire to say, however, in regard

to the flour rate between Minneapolis and Duluth, that it is apparent that Duluth has some natural advantages over Minneapolis with reference to the seaboard and export trade. Among these are shorter distance from the seaports and its location at the head or beginning of a water way. On the other hand, Minneapolis is considerably south of the line passing through the country east and west *via* Duluth to the seaboard, and the expense of transportation to Duluth necessarily represents largely the cost of carriage or portage from a location naturally on the Lake Michigan route across to the Lake Superior route to the seaboard. This additional expense Minneapolis should always be willing to pay. Such evidence as the record contains indicates that in adjusting the rates to the seaboard from the northern and western wheat region Chicago and Duluth have been the points of comparison, the one a Lake Michigan and the other a Lake Superior point; and treating the question as one of through rates to the seaboard, it is made quite plain that any reduction of the rate on flour between Minneapolis and Duluth would, if seaboard rates are now relatively adjusted in proper proportion, be accompanied by similar reductions on the Chicago or Lake Michigan route. On the other hand, Minneapolis has natural advantages to which she is entitled, namely, nearness to the wheat fields and a largely outgoing or westward moving business which must entitle her to some advantage over Duluth in these particulars.

That portion of the complaint in this case which relates to the flour rate from Minneapolis to Duluth and adjacent ports having thus been disposed of, we have next to consider the railroad rates for the transportation of wheat to Duluth and Minneapolis, respectively, from points west of those cities; and in this connection careful consideration must be given to the probable effect of any change in the present adjustment of those rates upon business dependent on interstate rates from points in the Dakotas, Minnesota, Iowa and Wisconsin to Milwaukee and Chicago.

In considering the rates to Duluth and Minneapolis the field of inquiry and the jurisdiction of the Commission is further limited to territory outside the state of Minnesota. Both these

cities being in that state the Commission has no authority over rates from any Minnesota point to either of them, if the shipment terminated and was intended to terminate at either point. The evidence does not enable us to determine whether any, and if so, what portion of the wheat shipped from points in Minnesota west of Minneapolis and Duluth is destined in its movement to points outside the state, but the scope of the arguments upon the record, and the record itself, favor the conclusion that a very large portion of it at least, is consigned and destined to Minneapolis or Duluth for manufacture into flour, thus being presumably a local shipment and the rate a domestic rate.

The inquiry is then, in fact, practically limited both by the complaint and the testimony to rates from points in North Dakota and in South Dakota to Minneapolis and Duluth, and to the effect of a change in those rates upon interstate transportation of wheat and flour to Lake Michigan ports.

A vast amount of testimony has been submitted in this case. Much of it relates to the reasonableness of the rate on flour from Minneapolis to Duluth, and this for reasons above given may be left out of consideration.

An immense mass of figures and statements has also been submitted, giving not only the distances and the rates on wheat by various routes and from various places to Minneapolis and Duluth, but also in great detail, (though with considerable conflict between complainant's and defendants' testimony) the average receipts and the average cost per ton per mile on all freight and on wheat over the lines of the defendants, and over lines elsewhere.

In the view we take of the case, it is not necessary to consider all these details; to do so it is believed would only tend to confusion.

A few prominent facts stand out in the record, or may be clearly deduced therefrom, which in our judgment afford a solution of the questions involved; and their significance is not materially affected, one way or the other, by the incidental mass of details from which the respective disputants seek to draw variant conclusions.

These leading facts, a proper understanding of which will be assisted by reference to the accompanying map, are as follows:

The line between the two Dakotas and Minnesota, to points west of which the inquiry is confined, coming southward from the national boundary line, passes just east of Grand Forks, Fargo and Wahpeton, and a few miles east of Fairmount—all in North Dakota. Then deflecting, first westward and then eastward, it passes just west of Brown's Valley and Ortonville, both in Minnesota. And from Ortonville, or a point a little west thereof, it runs due south, passing not many miles east of Sioux Falls, South Dakota.

The following table shows the distances and routes to Minneapolis and Duluth, respectively, from some of the principal points in the two Dakotas which have the same rates to either place:

			MILES			MILES
Fargo	via North. Pacific	to Duluth,	257,	via Great North.	to Minneapolis,	231
Casselton	"	"	277	"	"	259
Wahpeton	"	"	227	"	"	203
Davenport	"	"	276	"	"	243
Edgley	"	"	366	N. P. & Soo	"	305
Ellendale	G. N.	"	361	G. N.	"	290
Boynton	S. & G. N.	"	363	Soo	"	283
La Moure	N. P.	"	345	N. P. & Soo	"	284
Oakes	S. & G. N.	"	339	Soo	"	264
Oakes	N. P.	"	355	"	"	264
Aberdeen	G. N.	"	376	C. M. & St. P.	"	288
Redfield	C. & N. W. & G. N.	"	386	C. & N. W. & G. N.	"	285
Doland	"	"	365	"	"	264
Elrod	"	"	359	"	"	238
Hankinson	G. N.	"	281	Soo	"	206
Rutland	G. N.	"	312	G. N. & Soo	"	236
Andover	{ C. M. & St. P. & G. N. (about)	"	365	C. M. & St. P.	"	259

Fargo and Casselton are points of junction of the Northern Pacific main line with the Great Northern, and Wahpeton is a junction point of the Milnor branch of the Northern Pacific with the Great Northern. These junction points and all points west of them on the main line and the Milnor branch of the Northern Pacific, are nearer to Duluth over that road than over the Great Northern or any other line, by 40 or 45 miles, and it seems proper, therefore, that the rates to Duluth should in all cases be fixed by the Northern Pacific. On the other hand, the distance from Fargo and Casselton and all points

north and west thereof is less *via* the Great Northern to Minneapolis than *via* the Northern Pacific to Duluth by about 20 miles, or from 7 to 8 per cent. of the distance *via* the Northern Pacific (the shortest line) to Duluth. So Wahpeton and points west thereof, as far as Milnor and north as far as the main line of the Northern Pacific, are nearer *via* the Great Northern to Minneapolis, than *via* the Northern Pacific to Duluth by about 23 miles, or about 10 per cent. of the distance *via* the Northern Pacific (the shortest line) to Duluth.

Hankinson, Rutland, Ellendale, Boynton and Oakes are about 75 miles nearer to Minneapolis than to Duluth by the shortest practicable routes, there being about 20 to 23 per cent. difference in favor of Minneapolis. By the route actually taken from Boynton and Oakes the difference is much greater in favor of Minneapolis.

Aberdeen is about 88.5 miles nearer to Minneapolis than to Duluth by the shortest routes, or nearly 25 per cent. in favor of Minneapolis.

Andover is about 106 miles nearer to Minneapolis than to Duluth by the nearest practicable route, or about 30 per cent. in favor of Minneapolis. By the routes actually taken from Andover the difference is greater in favor of Minneapolis.

Redfield, Doland and Elrod are about 101 miles nearer to Minneapolis than to Duluth by the shortest practicable routes, or about 27 per cent. in favor of Minneapolis. By the routes actually taken from Redfield, Doland and Elrod, the difference in favor of Minneapolis is greater than this.

From Huron, Watertown, Sioux Falls and other points in South Dakota, Minneapolis has rates on wheat less than the rates to Duluth by from 2 to 5 cents per hundred, but complainant contends that this differential is not sufficiently great. The difference in distance from these points to Duluth and to Minneapolis is on an average about 25 per cent. in favor of Minneapolis by the nearest practicable routes, and is more than this by the routes actually used from most of these points.

Edgley, the terminus of one of the Northern Pacific branch lines, is very near to Boynton on the "Soo," though these lines do not actually intersect at either place. Oakes, the terminus of another Northern Pacific branch line, is also on the



"Soo," and La Moure at the intersection of the Oakes and Edgley branches is only some 20 miles from Oakes and the same distance from Edgley. So that wheat might be routed from either Edgley or La Moure over the Northern Pacific to Oakes and thence over the "Soo" to Minneapolis; and the distance from either place by this route to Minneapolis would be less by more than 60 miles than the distance *via* the Northern Pacific to Duluth. Treating Edgley and Boynton as practically one place, as for the purpose of rate making they are, Edgley is nearer by 60 miles to Minneapolis over the "Soo" than it is to Duluth over the Northern Pacific. And from Oakes, which is a point of actual intersection, the distance is less by about 90 miles to Minneapolis over the "Soo" than it is to Duluth over the Northern Pacific. Edgley, Oakes and La Moure are then on an average nearer to Minneapolis than to Duluth over the nearest practicable routes by about 70 miles, or 20 per cent. of the distance to Duluth, over the Northern Pacific.

Jamestown is about the same distance from Minneapolis by the line of the Northern Pacific alone, or by the lines of the Northern Pacific and the "Soo" *via* Oakes, as it is from Duluth *via* the Northern Pacific.

Davenport, the point of intersection of the Edgley branch of the Northern Pacific with the Great Northern, is about 33 miles nearer to Minneapolis by the Great Northern than to Duluth by the Northern Pacific, and this is about 12 per cent. of the distance to Duluth.

Where reference is made in this statement to the "nearest practicable routes" it is meant that the initial road connects at some point between the point of origin of the freight and its final destination, with some other road over which the shipment might be made, though in fact it may actually go by a longer route. Thus from Boynton and Oakes, the actual routing of wheat consigned to Duluth is over the "Soo" road to Minneapolis and thence by another road to Duluth. But the same shipment might be transferred from the "Soo" to the Great Northern at Hankinson, and go *via* the last named road through St. Cloud to Duluth, thus saving a very considerable distance in the haul. So from Andover to Duluth the actual

routing is probably by the St. Paul road to Minneapolis and thence by the Duluth road to Duluth. But the routing might be northward over a branch of the St. Paul road to its intersection with the Great Northern and thence over the last named line *via* St. Cloud to Duluth, thus effecting a considerable saving in distance. From Redfield, Doland and Elrod, while the actual routing is probably over either the St. Paul or the Northwestern, through Minneapolis and thence to Duluth, a great saving in distance might be gained by routing over the Northwestern to Watertown, and then over the Great Northern *via* St. Cloud to Duluth.

The difference in distance from most of these places to Minneapolis and to Duluth respectively, is much more by the routes actually taken, than by the nearest practicable routes. Therefore no injustice can be done either the carriers or the commercial interests of Duluth, by taking the nearest practicable routes as a basis of comparison of railroad rates to the two cities.

The railroads which serve this territory in the two Dakotas and transport their wheat product to Minneapolis and Duluth are,

1st. The Northern Pacific, the main line of which from Fargo extends westward through Casselton and Jamestown, and a branch of which extends southwestward through Davenport and La Moure to Edgley, with another branch from Carrington, a point north of the main line running southeasterly through Jamestown and La Moure to Oakes. Another branch of the Northern Pacific leaving the main line at Wadena passes westerly through Wahpeton to Milnor. All points on the main line and the above mentioned branches of the Northern Pacific are practically the same distance from Minneapolis as from Duluth *by the Northern Pacific road*. Staples is the point of divergence on that road of freight consigned to Minneapolis from that consigned to Duluth.

2d. The Great Northern, the northwestern branches of which intersect the main line of the Northern Pacific at Fargo and Casselton, and intersect the Edgley and Milnor branches of the Northern Pacific at Davenport and Wahpeton respectively. The Great Northern also has a line extending from Ellendale

eastward through Rutland and Hankinson, the last named place being a point of junction with the "Soo" road; and it has a branch running southwesterly from Rutland to Aberdeen. Other branches of the Great Northern extend northwestward from Sioux Falls and from Huron through Watertown.

3d. The St. Paul Company, which has a direct line from Aberdeen eastward through Andover, Milbank and Ortonville to Minneapolis, with a branch northward from Aberdeen through Ellendale to Edgley; a branch south from Aberdeen to Redfield; a branch northward from Andover to Harlem, intersecting the Great Northern and the "Soo" roads; a branch southward from Andover through Elrod, intersecting the Northwestern and the Great Northern; a branch from Sisseton to Milbank; and a branch southward from Fargo, through Wahpeton and Fairmount to Ortonville.

4th. The "Soo" line, extending eastward from Boynton through Oakes and Rutland.

5th. The Northwestern, which extends eastward from Redfield through Doland, Elrod and Watertown to a connection with the Omaha road, by which it reaches Minneapolis and Duluth. The Northwestern has a branch extending northward from Redfield through Aberdeen to Oakes, intersecting the St. Paul, the Great Northern and the "Soo." It has another branch extending northward from Doland to Groton a point on the St. Paul road between Aberdeen and Andover.

6th. The Omaha road, which extends from Sioux Falls northeastward to Minneapolis and Duluth.

The Northern Pacific and the Omaha reach both Minneapolis and Duluth with their own lines.

The Great Northern reaches Minneapolis with its own line, but going to Duluth it uses the line of the Eastern of Minnesota from Hinckley to Duluth.

The "Soo" and the St. Paul reach Minneapolis with their own lines, but to reach Duluth they have to use other lines connecting those cities.

The Northwestern road reaches neither Minneapolis or Duluth with its own line, but uses the Omaha from St. Peter to both places.

The lines connecting Minneapolis and Duluth are, first the Duluth, second the Omaha, and third the Great Northern and Eastern of Minnesota, working jointly by way of Milaca and Hinckley. The Northern Pacific line between Minneapolis and Duluth is too circuitous for practical use, compared with the others.

Upon the theory that the shortest line should make the rate, and that there should be a differential in favor of Minneapolis, proportioned to its shorter distance, the rate to Minneapolis over the Great Northern and the St. Paul roads from points of intersection with the main line of the Northern Pacific, and points north thereof should be from 7 to 8 per cent. less than the rates to Duluth; or 15 cents to Minneapolis while the rate to Duluth is 16 cents; and the rate to Minneapolis over the Great Northern and the St. Paul at the point of intersection at Wahpeton, and points north thereof as far as the main line of the Northern Pacific, should be about 10 per cent. less than the rates to Duluth, or  $14\frac{1}{2}$  cents to Minneapolis while it is 16 cents to Duluth.

On the same theory, Edgley, Boynton, Oakes and Ellendale, and points on the Northern Pacific, the "Soo" and the Great Northern lines in the vicinity of those places, should have a rate to Minneapolis about 20 per cent. less than the rate to Duluth, or 16 cents to Minneapolis while the rate to Duluth is 20 cents. From Rutland and points east thereof on the Great Northern, and from stations on the "Soo" immediately north, the rates, if adjusted upon the difference in distance to Minneapolis and Duluth respectively, by the lines of the Great Northern and the "Soo," should be about 25 per cent. less to Minneapolis than to Duluth. But this differential should be reduced by the consideration that the Milnor branch of the Northern Pacific runs nearly parallel to and at no great distance from the "Soo" and the Great Northern from Milnor eastward to the state line, and furnishes a route from the intervening territory to Duluth, considerably nearer than the route *via* the Great Northern to Duluth. Where the rate to Duluth is 19, 15 would be about right to Minneapolis from Rutland and the proportion of 16 to  $14\frac{1}{2}$  from Hankinson. On the same theory of proportionate rates according to distance

by the nearest practicable routes, all points in the two Dakotas lying south of that branch of the Great Northern road which extends from Ellendale eastward through Rutland and Hankinson, should have a rate to Minneapolis less by from 25 to 33 per cent. than the rate to Duluth.

In no case, upon this theory, should the differential in favor of Minneapolis from points in the Dakotas south of the said branch line be less than 5 cents per hundred while the rate to Duluth is as much as 20 cents per hundred from the same points.

Assuming that the rates to Duluth remain as they were fixed from the various points which have been named above at the time of the hearing in this case, a re-adjustment of the rates to Minneapolis upon this theory would give rates to those two cities as follows:

Rates from	To Duluth	To Minneapolis
Fargo,	16	15
Casselton,	17½	16½
Davenport,	17½	15½
Wahpeton,	16	14½
Milnor,	19	17
Hankinson,	16	14½
Rutland,	19	15
Harlem,		
Edgley,		
La Moure,	20	16
Boynton,		
Oakes,		
Ellendale,		
Aberdeen,		
Andover,		
Groton,	20	15
Redfield,		
Doland,		
Elrod,		
Woolsey,		
Huron,		
Lake Preston,		
Watertown,		
Sisseton,	Duluth 5 cents more than Minneapolis.	
Woonsocket,		
Vilas,		
Madison,		
Sloux Falls,		
Jamestown,	20	20

Since the hearing in this case, the rates from Fargo, Casselton, Davenport and Wahpeton, have been reduced to the extent of one-half a cent per hundred pounds. This is so slight

a reduction, that upon the theory here advanced the differential in favor of Minneapolis should still be as above suggested. That is the rates to Duluth from the points above named being, respectively, 15½, 17, 17 and 16 cents per hundred pounds, the rates from the same points to Minneapolis should be respectively 14½, 16, 15 and 13 cents per hundred.

The rate on flour from Duluth or other Lake Superior ports *via* lake to Buffalo and thence to New York varies from 17½ cents to 22½ cents per hundred during the season of open lake navigation. The rate on flour from Minneapolis to Duluth is 7½ cents per hundred; on wheat 5 cents per hundred. The rate on flour from Chicago, Milwaukee or other Lake Michigan ports *via* lake to Buffalo and thence to New York varies from 15 to 20 cents per hundred, being always 2½ cents less than the rate from Duluth. The rate on flour destined from Minneapolis *via* Lake Michigan ports by water to Buffalo and thence to points east is 10 cents per hundred from Minneapolis to such lake ports during the season of open navigation.

The rates on flour from Minneapolis to eastern and export markets are thus seen to be the same at any time during open navigation, by way either of Duluth or of Milwaukee, Chicago, or other Lake Michigan ports; for example, Gladstone or Duluth millers, being on the lakes, have during open navigation the advantage of Minneapolis millers in rates to eastern and export markets to the extent of the railroad charges for transporting flour from Minneapolis to Duluth, which is 7½ cents per hundred or 15 cents per barrel. This advantage applies principally when flour is shipped by lake; that is during about six months of the year. During closed navigation, when Duluth and Minneapolis send their flour east all-rail *via* Chicago, the rate to Chicago and thence east is the same from both places. But there is a route from Duluth *via* the Canadian Pacific over which the rate is 2 cents less than *via* Chicago. In using this Canadian Pacific route, Minneapolis, even during the season of closed navigation, still has the disadvantage of the 7½ cents per hundred as compared with Duluth. The bulk of the flour, however, goes during open navigation, taking the lake routes, and from Minneapolis goes

*via* Duluth or Gladstone,—very little by Milwaukee and Chicago.

From Duluth to New York by lakes and Buffalo is 1414 miles, from Minneapolis to New York by Gladstone, lakes and Buffalo, the shortest lake route is 1478 miles.

The daily capacity of the Minneapolis mills is about 40,000 barrels; the average daily out-put is less than this by several thousand barrels. The daily capacity of the Duluth mills is about 6,000 barrels and is being rapidly increased. The annual aggregate out-put of the mills at other points on the St. Paul line alone is as much as the out-put of the Minneapolis mills. The Minneapolis millers have the advantage over those of Duluth in the matter of cost of power, water power being principally used at Minneapolis and steam exclusively at Duluth. Duluth has the advantage of Minneapolis in the lesser cost and capitalization of plant in proportion to production or capacity.

The rates from the wheat fields to Minneapolis are usually so adjusted that the wheat rate to Minneapolis plus the flour rate from Minneapolis to Lake Michigan ports, Chicago, Milwaukee, Gladstone, is the same as the wheat rate from the fields direct to those ports. From Minneapolis to those ports the flour rate is 10 cents per hundred. This is done apparently to keep Minneapolis on a parity with milling points on Lake Michigan of which Milwaukee is the chief.

Milling points in Central and Southern Minnesota and Wisconsin are kept on a parity with Minneapolis and Milwaukee by giving them the privilege of "milling in transit." That is, the millers at points intermediate between the wheat fields and Lake Michigan, on receipt of wheat at their mills pay the full rate through to the lake, and are then allowed to forward the product (flour), to the lake without further charge.

While the millers at Minneapolis, Milwaukee and Central and Southern Minnesota and Wisconsin are thus on a parity as regards rates, Duluth has from a considerable territory much the advantage of any of them. This advantage is chiefly over Minneapolis, but it applies against Milwaukee and the country mills as well, in all cases where the wheat rates to Duluth are as low as to Minneapolis.



Minneapolis is a great wheat market as well as a great milling centre, and much of the wheat converted into flour by the Milwaukee and country millers is purchased by them in Minneapolis.

A reduction of the wheat rate to Minneapolis should, if the parity between millers at that city, Milwaukee and interior points is to be preserved, be followed by a corresponding reduction in the rate from the same points to Lake Michigan ports, and in the transit rate to interior mills.

The tonnage going west over the various defendant roads from Minneapolis is usually much greater in amount and also of a higher class, and will therefore bear a much higher freight charge, than that going west from Duluth. More back loading of wheat cars with profitable freight can be had from Minneapolis than from Duluth.

The St. Paul road pays the Duluth road for taking from Minneapolis to Duluth, wheat consigned over its line to Duluth about 4 to 5 cents per hundred. Similar payments are made by other roads reaching only to Minneapolis, but billing to Duluth. Before the Great Northern road was built there was no direct rate to Duluth. The charge to Duluth was simply that to Minneapolis with the local thence to Duluth added.

The general prosperity of Minneapolis is largely dependent on the prosperity of the milling interests of the city. The lumber and milling interests, both of which are very great are especially helpful to each other. Cars coming in from the west with wheat are largely loaded back with lumber, and the lumber is often paid for by elevator receipts for wheat, or drafts on millers who have purchased wheat. The general jobbing trade of the city, notably in the line of agricultural implements, is also largely influenced by the volume of the wheat and flour trade.

It can hardly be doubted, in view of the testimony, that under the present adjustment of rates on wheat the milling interests of Minneapolis, and with them its general prosperity, and possibly its population, must decline. So far as such a result would be attributable solely to the greater natural advantages of Duluth as a point for manufacture and shipment of flour, nothing perhaps could properly be done to avert it.

Duluth is nearer to the markets than Minneapolis, and to this extent its advantages can not and ought not to be denied or taken from it. But on the other hand Minneapolis is nearer to the wheat fields than Duluth and to this extent it is entitled to the advantage over Duluth which on that account should naturally belong to it. This natural advantage is denied to Minneapolis in the present adjustment of railroad rates, as between it and Duluth, from the wheat fields.

As a general proposition it is conceded that the shortest line should fix the rate, and several railway experts have testified in this case that the rates to Minneapolis and Duluth should be adjusted according to mileage, taking the shortest route to each place as the basis of comparison. As a general rule it is probably true that rates should not be proportioned strictly to mileage, the more distant point should usually have a greater actual rate, but a less proportionate or ton mile rate than the nearer point. This is due largely to the fact that the terminal expenses which do not vary with distance constitute a considerable part of the entire charge in either case and operate to reduce ton mile rates on the longer haul.

But this consideration in the present case seems to be fully balanced, perhaps more than balanced, by the fact that *back loading*, which is also a powerful element in the establishment of rates, is so much more certain, and the west bound traffic so much more profitable, from Minneapolis than from Duluth.

While it is true that from points on the main line and the Edgley and Milnor branches of Northern Pacific, Duluth and Minneapolis are equidistant by that line, yet these points are accessible to Minneapolis by routes composed in part of other roads which are decidedly shorter than the route *via* the Northern Pacific alone, and we are clearly of opinion that Minneapolis should have a differential in the wheat rate from the territory in dispute proportioned to its lesser distance as compared with the distance to Duluth by the nearest practicable routes in either case.

Should this principle be varied by the fact that from some points in this territory there is one road over the lines of which the distances to Duluth and Minneapolis are the same? It does not seem necessary to decide this question. Certainly that

road (the Northern Pacific) could not be held to discriminate against Duluth, by charging a greater rate to it than to Minneapolis from points having a much shorter line to the latter place. The Northern Pacific can therefore meet the lower rate to Minneapolis, which the equities of the situation plainly demand of the other lines, without lowering its rates to Duluth.

One other step the Northern Pacific might possibly take, and that is to bring down its rates to Duluth to the level of the reduced rates ordered over the other lines to Minneapolis. Should it do so the other lines would either immediately have to reduce their Minneapolis rates again, or go out of the Duluth business from points accessible to the Northern Pacific. They would probably adopt the former alternative and thus frustrate any advantage the Northern Pacific might seek to derive by inaugurating the original reduction to Duluth. The result of any such proceeding would manifestly be highly injurious to all the roads, and it can hardly be supposed that the Northern Pacific will undertake it. At all events, the anticipation of such a course on its part should not prevent an effort on the part of the Commission to abolish the discrimination which Minneapolis now suffers at the hands of other lines. It is believed that the readjustment of rates about to be ordered will still leave Duluth an advantage in rates over Minneapolis, considering the additional price the latter must pay to get its flour to Duluth, and from all points on and naturally tributary to the Northern Pacific and its branches, the advantage of Duluth will be very decided, securing apparently its full share of the business to the Northern Pacific. We are of opinion that while the rates to Duluth remain as they now are, the rates *via* the St. Paul, the "Soo," the Great Northern, the Northwestern, and the Omaha roads should be adjusted as follows :

From and including Fargo, Casselton and Sidney and points north of them, the rates should be 1 cent per hundred less to Minneapolis than to Duluth. From and including Wahpeton and points north as far as the main line of the Northern Pacific and south to Fairmount the rates to Minneapolis should be 1½ cents per hundred less than to Duluth. From and including Fairmount and all points west thereof on the "Soo"

and the Great Northern lines, including Harlem and Edgley, the differential in favor of Minneapolis should be not less than 2 cents, and as much more as may be necessary to reduce the maximum rate to Minneapolis from any point to 16 cents per hundred, and from Rutland and points east thereof to not exceeding 15 cents per hundred. From all points in the two Dakotas south of lines extending eastward from Ellendale through Rutland, Hankinson and Fairmount (and east of the Fargo branch of the St. Paul road) there should be a differential in favor of Minneapolis at not less than 5 cents per hundred.

**THE GERKE BREWING COMPANY V. THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, THE KENTUCKY CENTRAL RAILWAY COMPANY, THE NORFOLK & WESTERN RAILROAD COMPANY.**

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Complaint filed, August 1, 1891.—Joint Answer filed, September 23, 1891.—Amended Complaint filed, November 5, 1891.—Answer to Amended Complaint filed, November 23 to December 1, 1891.—Heard at Cincinnati, May 6, 1892.—Brief for Complainant filed, May 28, 1892.—Decided, February 28, 1893.

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1. The rule expressed by the fourth section that distance shall ordinarily limit the adjustment of rates is not rendered inoperative by the existence at one point of converging lines subject to the Act, for the law applies to each of these lines, and neither can put in rates to that point which are lower than shorter distance charges on its line until upon a showing of special considerations grounded in justice to its patrons and itself, it obtains permission from the regulating authority so to do. This principle applies both to lines between the same points, and to lines reaching the same destination from different points of consignment.
2. Competition with carriers not subject to the statute is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the Act depends upon compliance with the law by each of the competitors and the special circumstances and primarily indefinite conditions in each particular case. *Georgia Railroad Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324, cited and affirmed.
3. When rates from any cause are made greater for shorter than for longer distances the difference between such rates must in no instance be unreasonable.

*E. P. Wilson* and *Louis Kraemer*, for Gerke Brewing Company.

*Ed. Barter* and *Edward Colston* for Louisville and Nashville Railroad Company and Kentucky Central Railway Co.

REPORT AND OPINION OF THE COMMISSION.

*VEAZEY, Commissioner:*

The complainant, a corporation, is engaged at Cincinnati, Ohio, in the manufacture and sale of beer. The original complaint was against the two carriers first above named, and the

Norfolk & Western was brought in as a party defendant in the amended complaint filed November 5th, 1891.

The complaint alleges that the defendants, the Louisville & Nashville Railroad Co. (hereinafter called the Louisville Co.) and the Kentucky Central Railway Co. (hereinafter called the Kentucky Co.) demand, collect and receive for the transportation of beer in carloads from Cincinnati to Middlesborough, Ky., distance 233 miles, an unreasonable and unjust charge of 39 cents per hundred pounds, when compared with rates accepted by said defendants for similar service over other lines or parts of lines jointly or severally owned and controlled by them, and the following places, distances from Cincinnati and rates per hundred pounds on beer in carloads are named:

Knoxville, Tenn.....	307 miles.....	25 cents
Chattanooga, " .....	336 " .....	25 "
Birmingham, Ala.....	487 " .....	25 "
Nashville, Tenn.....	295 " .....	15 "
Clarksville, " .....	287 " .....	23 "
Decatur, Ala.....	417 " .....	29 "
Montgomery, " .....	600 " .....	31 "
Selma, " .....	929 " .....	31 "

That said rate is also unjust and unreasonable when compared with rates on beer in carloads charged by other railroads to points more remote from Cincinnati than Middlesborough, namely:

Kanawha Falls, W. Va.....	247 miles.....	18 cents.
Grafton, W. Va.....	299 " .....	23 "
Dennison, Ohio.....	221 " .....	13 "
Pittsburgh, Pa.....	313 " .....	15 "
Chicago, Ill.....	305 " .....	15 "
Cleveland, O.....	244 " .....	13 "
Kankakee, Ill.....	249 " .....	15 "
Youngstown, O.....	301 " .....	13 "

That said rate of 39 cents per hundred pounds, charged by the Louisville Co. and the Kentucky Co. for carrying beer in wood from Cincinnati, Ohio, to Middlesborough, Ky., is greater than they together with the other defendant, the Norfolk & Western Railroad Co. (hereinafter called the Norfolk Co.) charge for carrying beer in wood from Cincinnati over the same line and in the same direction through Middlesborough to points beyond in the state of Virginia, that is to say, to Pearisburg, 33 cents, New River, Christiansburg, or Shawville, 31 cents, Salem, Roanoke, or Lynchburg, 23 cents, and that

such greater charge for the shorter distance to Middlesborough is in violation of the fourth section of the Act to regulate commerce.

The complaint further alleges that the Louisville & Kentucky companies in connection with other railroad companies are parties to through tariffs from Chicago to Middlesborough whereby, during the month of June, 1891, a rate on beer in wood of 59 cents per hundred pounds was lawfully in effect between those points, and that some time during that month the Louisville & Kentucky companies through their agents did collect and receive as compensation for the transportation of beer in wood from Chicago to Middlesborough a less sum than 59 cents per hundred pounds thereby violating section six of the Act to regulate commerce.

The joint answers of the Louisville & Kentucky companies deny that the rate complained of is an unjust or unreasonable charge for the service rendered. They deny also that the transportation from Cincinnati to Middlesborough is similar to the service rendered over other lines or parts of lines to the points named in the complaint and aver that no just comparison can be made of service rendered under so entirely dissimilar circumstances. They admit that the rates from Cincinnati to Knoxville, Chattanooga, Birmingham, Nashville, Clarksville, Decatur, Montgomery and Selma on beer in wood, in carloads, released, are as set forth in the complaint, but state in regard to those charges that the 25 cent rate to Knoxville, Chattanooga and Birmingham is a special rate made principally to meet the competition of local breweries at those points; that the Nashville rate is also made low for the same cause, and on the further ground of water competition from Cincinnati, Evansville and St. Louis, and that Clarksville rates are based on rates in effect to Nashville; that at Decatur there is severe competition between Cincinnati, Evansville, St. Louis and Memphis breweries; that at Montgomery there is local brewery competition as well as competition for the carriage of beer to that point by boats on the Alabama river, and that Selma takes Montgomery rates. These defendants say that "in making rate reductions to meet local product, the rail lines have in no case unjustly antagonized the local interests.



Their endeavor has been to so adjust rates from the principal brewing points in the west as to permit of reasonable competition."

These defendants state also that they are not engaged in traffic to points named in the complaint as situate in West Virginia, Pennsylvania, Ohio and Illinois, and insist that their rate to Middlesborough has no relation to rates from Cincinnati to points in those states.

They further state that the construction of the Cumberland Valley branch of the Louisville Co., which reaches Middlesborough, was begun in November, 1886; that said branch penetrates a region not previously supplied with rail transportation and practically not then supplied with any transportation facilities; that the road runs through a mountainous region, making its construction peculiarly difficult and exceedingly expensive, it having required three years to build the line of 45 miles from Corbin on the Knoxville division to Middlesborough; that Middlesborough, located at the foot of Cumberland Gap, has only been in existence for a period of about two years, and prior to the construction of the Cumberland Valley branch the section of the Cumberland mountain on the north side of the Gap was dependent for transportation from western points on a wagon haul of 50 or 60 miles from the nearest point on the Knoxville division of the Louisville Company's system over mountain roads impassable for the greater portion of the year; that the nearest point of distribution on the south side of the mountain was Knoxville, about 75 miles distant, and transportation therefrom was conducted by horses, mules or oxen; that when the Louisville Company completed this branch it extended to a region previously devoid of transportation facilities the benefit of the same local tariff of rates which governs similar traffic in the old and thickly settled portions of Kentucky and Tennessee; that beer in wood in carloads released is put by defendants in class E, and that the rate for that class is not only reasonable in itself, but reasonable as compared with other rates from Cincinnati to Middlesborough, the rates on all classes between those points being:

(per bbl.)																
1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
70	60	53	48	43	39	39	39	24	19	39	39	48	29	28	20	15

These defendants further claim that rates for class E or any other classes are dependent upon and fixed with regard to rates received for the transportation of other articles taking other class rates, and that their local classification of ale and beer is in line generally with the classification of those articles throughout the country; and they state that these commodities are placed in the several classifications now in use throughout the country as follows:

**ALE, BEER OR PORTER, IN WOOD, CARLOADS RELEASED.**

<i>"Official"</i> Class 5	<i>"Southern"</i> E	<i>"Western"</i> 5
<i>"Illinois"</i> Class 5	<i>"Georgia"</i> E	<i>"L. &amp; N. Local"</i> E

It is also averred by these defendants that in the transportation of beer special facilities are furnished by the carrier to the shipper; that it is a perishable product, subject to much risk in transportation, and therefore is given special attention to secure speedy and safe carriage; that they furnish for the shipment of this article refrigerator cars, specially constructed at great expense and weighing much more than the ordinary freight car, and make no freight charge for ice in the same car with ale or beer in carloads, necessary to preserve it in transit; shippers being permitted to load as much as 4,000 lbs. of ice when necessary for such preservation.

In regard to the long and short haul feature of the complaint these defendants deny that they are under any common control or management with the Norfolk Company, admit they have agreed with that company upon certain through rates for the transportation of property wholly by railroad between Cincinnati and Lynchburg and other points in Virginia, but deny that they are under any arrangement with the Norfolk Co. for continuous carriage or shipment of property between those points. They further state that they carry beer from Cincinnati through Middlesborough to Norton, Va., their eastern terminus, and there deliver it to the Norfolk Co., which transports it to the Virginia points mentioned in the complaint; that it is true that said Virginia points are more remote from Cincinnati than Middlesborough, and also true that between Cincinnati and Middlesborough the transportation is over the

same line in the same direction when the beer is destined for Middlesborough as when it is destined for said Virginia points, but they deny that the transportation to these points and to Middlesborough is conducted under substantially similar circumstances and conditions. In support of their claim that such circumstances and conditions are dissimilar these defendants state as follows:

“The line of the Louisville & Nashville Railroad was extended in 1890, from a point in Kentucky, through Middlesborough to Norton, Virginia, where a junction was effected with the Norfolk & Western Railroad. Long prior to the time said junction was effected, certain through rates had been agreed upon by lines which competed with each other for the transportation of property between Cincinnati, Ohio, and Lynchburg, Petersburg, Richmond, and other Virginia cities; and when said junction was effected, respondents agreed to transport property over their lines to Norton, Virginia, for a certain proportion of said through rates. Said rates were not made by respondents. They were the result of active and long continued competition between powerful rival lines. Respondent's offense, if any, consisted exclusively in providing the public with an additional and more direct line of railway, without requiring the public to pay anything additional for the new transportation facility thus afforded.”

“Respondents also agreed to transport over their lines to Norton, Virginia, property destined from Cincinnati to local stations on the Norfolk & Western Railroad for a certain proportion of certain through rates, which were arrived at by adding to the rates in effect between Cincinnati and Lynchburg, the local rates fixed by the Norfolk & Western Railroad Company, to apply on traffic destined from Cincinnati to said local stations. In that way, said local stations also got the benefit of the additional facilities afforded by the extension of the Louisville & Nashville Railroad to Norton.”

The answer of the Norfolk Co. admits that it and the other defendants have arrangements for the transportation of property which by reason of its point of origin or destination requires the use of a portion of the railways of each company,

but that such arrangements impose no obligation or responsibility upon it when the carriage of the property is wholly upon either one or both of the other defendant roads.

This company admits that it participates in rates for the transportation of beer in wood from Cincinnati, O., to points upon its road, but avers that in the adjustment of said rates to local destinations on its road it is governed by circumstances and conditions dissimilar to those which fix the rates to common and competitive points in the state of Virginia, and it believes that its rates are made in strict accordance with the law.

At the hearing no proof was offered by complainant upon the question whether the rate to Middlesborough is reasonable in itself; neither was any evidence presented by it for the purpose of showing that undue preference or prejudice results from rates to Middlesborough and the other points mentioned in the complaint as not located upon the same line, or in support of the charge of unjust discrimination by defendants in collecting less than established rates on beer from Chicago to Middlesborough. The small amount of material testimony taken was, on the part of the defendants, mainly a reiteration of their pleading; and it was definitely stated for complainant that it relied principally upon the admission of defendants that they charge more to Middlesborough than for the longer distance over the same line to points in Virginia, and was content to submit the case upon the complaint and answers on file.

There is therefore but a single question to be decided in this case, namely, is the rate complained of in violation of the fourth section of the Act to regulate commerce?

The facts necessary to a decision on this point are as follows:

1. Each of the defendant companies is engaged in the transportation of property between points in different states. The roads of the Kentucky and Louisville companies are now parts of the same system (the Louisville & Nashville) and are operated under a common control or management. The Louisville and Norfolk companies are parties to and have established through rates for the transportation of property

from Cincinnati, Ohio, to Lynchburg and other points in the state of Virginia, and under bills of lading issued by the Louisville Company and accepted by the Norfolk Company they carry, by such arrangement, property as a continuous shipment between these points at rates so established and over a line formed by roads which they respectively manage or control; and Middlesborough is an intermediate station on such line from Cincinnati to the Virginia points aforesaid.

The Louisville Co. has established rates for the transportation of property from Cincinnati to Middlesborough aforesaid, and, under bills of lading issued by it, carries property as a continuous shipment between those points at rates so established and over a line which it manages or controls; and said line is part of the above described line between Cincinnati and the Virginia points aforesaid.

2. Rates established and in force for the transportation of beer in wood in carloads, released, over said line from Cincinnati to the Virginia points aforesaid and to various intermediate stations, together with the distances of said points and stations from Cincinnati are as follows, to wit:

To	Rates per 100 lbs.	Distance from Cincinnati.
Livingston, Ky.....	30 cts.	155 miles.
Corbin, Ky. ....	35 "	186 "
Barboursville, Ky.....	40 "	203 "
Pineville, Ky.....	40 "	217 "
Middlesborough, Ky.....	39 "	230 "
Shawnee, Tenn.....	39 "	237 "
Ewing, Va.....	45 "	250 "
Hubbard's Springs, Va.....	46 "	263 "
Big Stone Gap, Va.....	44 "	291 "
Norton, Va.....	44 "	305 "
Pearisburg, Va.....	33 "	440 "
New River, Va.....	31 "	471 "
Christiansburg, Va.....	31 "	481 "
Shawville, Va.....	31 "	491 "
Salem, Va. ...	23 "	507 "
Roanoke, Va.....	23 "	513 "
Lynchburg, Va.....	23 "	567 "

These rates apply to shipments of "Beer in wood, carloads, released." The traffic is transported in refrigerator cars and ice necessary for its preservation is carried free.

3. No competition by lines not subject to the Act to regulate commerce exists for through beer or any other traffic from Cincinnati or any other interstate point to the places above

mentioned. There is competition by the Chesapeake & Ohio Railway, an interstate carrier, for traffic from Cincinnati to Lynchburg, the distance between these points by that route being 470 miles, and the line of this carrier to Lynchburg is shorter than that of the defendants by 97 miles.

All rail lines carry beer to Lynchburg from various brewing points in the east, such as Richmond, Baltimore, Washington, Alexandria, New York and Philadelphia, and from northern cities the traffic can also go as a through shipment by water and rail through Maryland or Virginia ports.

### CONCLUSIONS.

The foregoing findings set forth facts sufficient for the disposition of this case.

The defendants transport beer in carloads from Cincinnati, Ohio, to Lynchburg and other points in Virginia, under a condition in the bills of lading releasing them from certain liability as carriers, and according to a common arrangement between them for continuous carriage and shipment within the meaning of the first section of the Act to regulate commerce. (*Georgia Railroad Com. v. Clyde S.S. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324; *Boston Fruit & P. Exch. v. New York & N. E. R. Co.* 3 Inters. Com. Rep. 493, 4 I. C. C. Rep. 664; *Mattingly v. Pennsylvania Co.* 2 Inters. Com. Rep. 806, 3 I. C. C. Rep. 592; *Richardson v. The Chouteau*, 37 Fed. Rep. 532; *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.* 37 Fed. Rep. 572; *Harp v. The Grand Era*, 1 Woods C. C. 184. Over a part of the all rail line to Lynchburg and other points aforesaid, and under a like condition in bills of lading, two of the defendants transport beer in carloads from Cincinnati to Middlesborough, Ky., a shorter distance included within the longer distance to Lynchburg, Va., and over the same line in the same direction, and such transportation is conducted by said defendants under a common control or management within the meaning of the first section of the Act to regulate commerce. The defendants and the transportation by them to the interstate points mentioned in the complaint are therefore subject to the provisions of the Act to regulate commerce.

Under the construction of the fourth section by the Commission and the Courts, as set forth in our decision in the Georgia Railroad Commission cases, 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324; the defendants are not authorized by the statute to establish and charge lower rates to longer than to shorter distance points, mentioned in the complaint and findings, by the fact that other interstate railroads reach those or some of those longer distance points from Cincinnati or from other points of shipment. The rule expressed by the fourth section that distance shall ordinarily limit the adjustment of rates is not rendered inoperative by the existence at one point of converging lines subject to the Act, for the law applies to each of those lines, and neither can put in rates to that point which are lower than shorter distance charges on its line until, upon a showing of special considerations grounded in justice to its patrons and itself, it obtains permission from the regulating authorities so to do. This principal applies both to lines between the same points and to lines reaching the same destination from different points of consignment.

It is true that situations frequently arise when one carrier is at an unjust disadvantage as compared with another in the business of carrying to a common point. But the situation at junction or common points is not *uniformly* so oppressive as to justify exceptional action by the carriers in disregard of the rights of places more favorably situated in point of distance.

The term competition as applied to rates is frequently a misnomer. Roads reaching a common point may at first compete by one and then the other giving lower rates to that point until finally they are compelled to combine in fixing a rate by which each will obtain a fair share of the business and derive a profit. Carriers not only determine upon rates between themselves, but rates to important junction or common points are also fixed at meetings of or through associations composed of carriers in common territory. These rates, fixed in the interests of all the carriers, and with reference of course to the general situation in the immediate territory, are intended to be profitable. While rates so made are still competitive in a narrowed sense, the force of natural and unrestricted competition between the carriers is materially modified by their



combined action; and though traffic conditions may and usually do limit the amount of increase in charges, yet concerted action by the carriers commonly results in such rates as will yield fair compensation for the service rendered. The disadvantages from which some carriers subject to the statute might suffer under varying traffic situations are, in large measure, removed by agreements among themselves which greatly modify the oppressive force of free competition; and association or action in concert is freely resorted to by such carriers.

The theory sometimes advanced that the Act was intended to eliminate competition as a factor in transportation is not borne out by the provisions of the statute. Perhaps the ideal reasonable and just transportation charge should be unaffected by the element of competition; but the statute only applies to certain classes of carriers, prohibits only such preferences or discriminations as are undue or unjust and confers upon a regulating body power to relax in the interests of those carriers its general rule that rates shall ordinarily depend upon distance, and was evidently not framed in disregard of the competitive relations existing between common carriers throughout the country.

To preserve legitimate competition between public carriers, that is, competition which is not contrary to the public interest, and to prevent that competition which is illegitimate, or in other words, opposed to the public welfare, is precisely that which, among other things, the law undertakes to accomplish. The clauses prohibiting undue preferences and requiring reasonable, just and non-discriminating rates were designed to abolish the illegitimate practices indulged in by carriers before the Act was passed, and much of the favoritism given to persons and places was unquestionably the result of unfair competition between carriers by rail; besides, to further secure to persons and communities their advantages of location, the law in its fourth section directs that distance shall ordinarily limit the making of rates in the same direction. Conditioned upon faithful and mutual observance of those provisions, the right of carriers subject thereto to compete, not only in rates, but also, and with very much greater freedom, in facilities and

accommodations, is clearly recognized in the statute. No qualifying phrases which may be found in such provisions can properly be held to refer to business strife between carriers subject thereto; but Congress did provide a relieving clause for the benefit of such carriers by adding to the distance rule in the fourth section a proviso giving the Commission power to authorize a carrier, upon application and after investigation, to charge less for longer than for shorter distances, and from time to time to prescribe the extent of such relief, that is, to limit the reduction of rates for longer distances. Any person at all familiar with transportation as conducted in this country is aware that the principal ground which a carrier subject to the Act can allege for such relief is competition; and that allegation was the one mainly relied on by carriers in their applications to the Commission for such relief immediately after the law went into effect. Before its enactment, competition between carriers subject to the statute had been shown to result in many illegitimate practices, but it was also apparent that within proper limits such competition is beneficial to the public and a privilege grounded in fairness to the carriers; it therefore became necessary to provide for the ascertainment and continuance of legitimate competition between such carriers in an authoritative way, and the fourth section proviso was made a part of the law.

Transportation by water or by other agencies not subject to the law present a wholly different question. As stated in the Georgia Railroad Commission cases, 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324, actual competition with carriers not subject to regulation under the Act to regulate commerce is, as a rule, potential in the extreme, for the law places no limitation upon such a carrier as to rates, service or facilities. So far as the statute is concerned such a carrier may charge unreasonable, unjustly discriminating and unduly prejudicial rates to any point, and adopt whatever regulations its private interest may demand. On the other hand, in the application of the law to carriers subject to its provisions their private rights are subordinate to those of the public, and competition between them is not always in the public interest. It is as a broad general rule, against the public interest that artificial circumstances,

which at the will or caprice or for the self interest of any man or body of men (individual or corporate carriers) may be swept out of existence as lightly as they were perhaps created, should be permitted to interfere with the natural course of trade. *Liverpool Corn Trade Asso. v. London & N. W. R. Co.* L. R. 1 Q. B. Div. 120, 45 Am. & Eng. R. Cas. 216. If railroad competition should be considered as justifying the exceptional rate in every case where the term is applied, (and the degree or force of such competition is of great variety), any railroad might by its action absolve a competitor from its obligation under the law and be itself absolved in return. The legislature never intended this consequence; it did not intend that carriers subject to the law should at pleasure make the rule of the statute ineffectual. *Re Chicago, St. P. & K. C. R. Co.* 2 Inters. Com. Rep. 137, 2 I. C. C. Rep. 231. Besides a shipper having a choice between competing carriers would only have to refuse to send his goods by one of them unless given exceptional rates to justify that one in making the discrimination in his favor on the ground of the necessity of the situation. *Interstate Commerce Commission v. Texas & P. R. Co.* 4 Inters. Com. Rep. 114. These principles are peculiarly applicable to carriers subject to the same general scheme of regulation; furthermore, it must be remembered that water lines were designedly left free from the operation of the law in order to preserve untrammelled the advantages of such communication to territory reached by "river, sea, canal or lake." The fact of the exclusion of this method of transportation from the operation of the law is in itself a declaration that competition by water should not be confounded with competition by rail. And the same distinction applies to foreign and state railroads where they do not come under the prohibitive clauses of the law. Competition with carriers not subject to the statute is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the Act depends upon compliance with the law by each of the competitors and the special circumstances and primarily indefinite conditions in each particular case.

"The carrier has the right to judge in the first instance whether it is justified in making the *greater charge for the*

*shorter distance* under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under the Act to regulate commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar, and carriers must not charge *less for the longer distance* except upon the order of this Commission."

*Georgia Railroad Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324.

The construction of the law as laid down in the Georgia Commission cases and here somewhat further discussed was not in any sense an arbitrary ruling; it was arrived at after patient and thorough examination of all the authorities upon the long and short haul question; and that it is clearly in harmony with the obvious intent of Congress, the decisions of Federal and English courts, and the basis of construction originally laid down by the Commission on the subject, is the best proof of its being the correct interpretation of the meaning of the fourth section.

The effect of market competition upon rates for longer distances under the fourth section is, so far as carriers are concerned, a collateral question with that of competition between carriers subject to the statute, and necessarily can only be determined by the same general rule.

"To determine the force and effect of such (market) competition involves consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines."

*Georgia Railroad Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324.

If the application of the theory set forth in the answer of the Louisville and Kentucky companies in this case, that rates on an article to a given point should be lower when the commodity carried is also manufactured at that point, operates to produce an undue preference or prejudice under the third section or a deviation from the rule of the fourth section, it cannot be sanctioned. But it is not important to discuss the general propriety of that theory with reference to the decision of this case, and our only reason for giving it any attention is the fact of its being involved in the general question of market competition.

Questions of market competition and railroad competition are susceptible of simple solution if carriers generally will do willingly that which, under the law, they must do perforce, namely, endeavor to bring about legitimate prosperity and advantage to themselves in conformity with, not in defiance of, the law's provisions. Willing conformity with the statute would necessarily result in narrowing the range of investigations and in eliminating therefrom rate questions which depend for solution upon the lawful action of other carriers. Let that position be taken, and much of the illegitimate force of such competition will have vanished; what remains can be dealt with mainly under confined and simple situations, and most rapidly and effectively in cases under the proviso clause of the fourth section; while at the same time hardship can be authoritatively relieved.

One fact in this case may properly be noticed. "The rate on beer of 23 cents from Cincinnati to Lynchburg, distance 567 miles, affords a rate per ton per mile of a little over 8 mills; but the rate of 39 cents from Cincinnati to Middlesborough, distance of 230 miles, yields a rate per ton per mile of over 3½ cents. We refrain from expressing any opinion as to the character of either of these rates considered by itself, but we do not hesitate to say that a rate per mile for a shorter haul which is more than four times the rate per mile for a longer distance is extortionate if the longer distance rate is remunerative. When rates from any cause are made greater for shorter than for longer distances the difference between such rates must in no instance be unreasonable.

In this case the burden was upon the defendants to show their right to make the greater short haul charge complained of without having first obtained from this Commission an order authorizing them to make the lesser long haul charge with which under the fourth section such greater charge is compared. This they have not done. It appears by the findings that rates from Cincinnati are greater for shorter hauls to various points on the roads involved in this controversy, and the order will therefore be that the defendants cease and desist, on or before March 20, 1893, from charging for the transportation of beer or other property from Cincinnati to Middlesborough and other points on the same line as far as and including Lynchburg any greater aggregate compensation on similar shipments of like kind of property for shorter than for longer distances; and that they be required to thenceforth abstain from making any less charge for the longer than for the shorter distances aforesaid except upon the filing by them of an application for relief from the operation of the fourth section and the issuance by this Commission of an order permitting such lesser charge.

**JAMES & ABBOT V. THE CANADIAN PACIFIC  
RAILWAY COMPANY; THE MAINE CENTRAL  
RAILROAD COMPANY; THE BOSTON AND  
MAINE RAILROAD COMPANY.**

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Complaint filed March 21, 1892.—Answers filed April 12 to May 6, 1892.—  
Testimony heard at Boston, September 8 and 9, 1892.—Briefs filed,  
October 25 to November 28, 1892.—Decided, March 11, 1893.

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1. The statute provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant," and defendants are therefore not entitled to a dismissal of the complaint on the ground that the petitioners, being merely commission merchants, can sustain no direct or material damage under the rates in question.
2. When water competition is alleged to justify rates in any case under the statute the carrier must affirmatively show by proof which does more than create a presumption and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the point in question.
3. Manufacturing industries should not be deprived, through a carrier's adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product.
4. A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. Citing *Logan v. C. & N. W. R. Co.* 2 Inters. Com. Rep. 431, 2 I. C. C. Rep. 604.
5. When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges, including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.
6. The "drive" of shingle logs down rivers which flow past the place of cut in Maine to a seaport in Canada where shingle mills are located, and from which the product may go by sea to market ports, affects shingle traffic from competing mills located along these rivers at a place in Canada and a place in Maine, but operates with less force at the latter point. The rail rate from the Canadian mill to market being fixed with especial reference to the effect of the log drive to and water competition for shingle traffic from the seaport, the rate from the Maine mill should be made upon the same basis.



7. Defendants ordered to restore the relation of rates on shingles to Boston which they established after the filing of complaint herein but soon after discontinued, to wit, a rate from Fort Fairfield in Maine of not exceeding  $6\frac{1}{2}$  cents above the rate in force from Fredericton in Canada. Complainant's claim for reparation denied.

*A. B. Paine*, for Complainants.

*A. C. Raymond*, for Canadian Pacific Railway Company.

*Sigourney Butler*, for Boston & Maine Railroad Company.

#### REPORT AND OPINION OF THE COMMISSION.

*VEAZEY, Commissioner :*

It is alleged in the complaint that the defendants are engaged in the carriage of interstate commerce under joint traffic arrangements and are subject to the provisions of the Act to regulate commerce. That they charge and receive  $16\frac{1}{2}$  cents per hundred pounds on lumber in carload lots and  $31\frac{1}{2}$  cents per hundred pounds on shingles in carload lots from Fort Fairfield, Stevens' Siding and Hurd's Siding in the state of Maine to Boston in the state of Massachusetts, a distance of about 484 miles, while they charge and receive only  $14\frac{1}{2}$  cents on lumber in carload lots and  $16\frac{3}{4}$  cents per hundred pounds on shingles in carload lots from Fredericton, Tracey and Russia-gornish in the Province of New Brunswick to Boston aforesaid, a distance of about 433 miles; that said rate of  $31\frac{1}{2}$  cents per hundred pounds on shingles from Fort Fairfield, Stevens' Siding and Hurd's Siding is unreasonable and unjust, and that defendants discriminate against the petitioners by exacting from them a greater charge than they do from shippers at Fredericton, Tracey and Russia-gornish for what is practically a similar service.

The prayer of the petition is that the  $31\frac{1}{2}$  cent rate on shingles from Fort Fairfield, Stevens' Siding and Hurd's Siding be reduced to a rate that is reasonable and that defendants be ordered to repay all sums which they may have exacted subsequent to the date of the petition in excess of the rate which the Commission shall decide to be just and reasonable.

The answer of the defendant, the Canadian Pacific Railway Company, admits that it is under joint traffic arrangements

with the other defendants and subject to the Act to regulate commerce; that at the date of the petition, the rates on lumber and shingles set forth therein were in force over the defendant lines, but that before the petition was filed the defendants had in contemplation a readjustment of the rates aforesaid; that the rates now in force are  $15\frac{1}{2}$  cents per hundred pounds on lumber in carload lots and  $26\frac{1}{2}$  cents per hundred pounds on shingles in carload lots from Fort Fairfield, Stevens' Siding and Hurd's Siding to Boston and  $14\frac{1}{2}$  cents per hundred pounds on lumber in carload lots and 20 cents per hundred pounds on shingles in carload lots from Fredericton, Tracey and Russia-gornish to Boston; that these rates of freight are just and reasonable and not in violation of the Act to regulate commerce, for the reason that the circumstances and conditions attending the traffic aforesaid from the two groups of places are substantially dissimilar as to value, volume and relation to other traffic over the same line of railway, as to manner and cost of obtaining logs, and as to water competition, which exercises a controlling effect on the rates of freight obtainable from Fredericton to Boston, but which does not exist from Fort Fairfield, Stevens' Siding and Hurd's Siding; that said last named stations are situated upon a branch line originally known as the Aroostook Railroad of Maine; that said line was built by the New Brunswick Railway Company of New Brunswick, Canada, which said last named road was in turn leased to the Canadian Pacific Railway Company; that the character and volume of the traffic upon said branch line and the cost of hauling such traffic on said branch line render the rates now in force unremunerative to the lessee, the Canadian Pacific Railway Company, and that any further reduction in said through rates would compel the defendant to operate the said branch line as a local line at local rates of freight to the point of junction with defendant's main line of railway; that the rates of freight from Tracey and Russia-gornish are substantially nominal for the reason that little or no lumber or shingles have been or are likely to be shipped from those points, and said rates are made equal to those from Fredericton to preserve the symmetry of the tariff sheet.

The answers of the other defendants are substantially similar to that of the Canadian Pacific Railway Company; but that of the Maine Central contains the additional averment that the low rates forced upon defendants by the water carriers from Fredericton are not remunerative in themselves, but by meeting rates and holding traffic to the rail which would otherwise seek the water route, a large amount of freight is secured for inland points from new business built up by shippers, the outgrowth of their exclusive patronage of the rail lines.

At the hearing for the purpose of taking testimony, the petitioners claimed that under the readjustment of rates since the petition was brought, the shingle rate from Fort Fairfield, Stevens' Siding and Hurd's Siding was still unjust and unreasonable, and in comparison with the rate from Fredericton subjected them to unjust discrimination; on motion, petitioners were granted leave to amend the complaint accordingly.

It also appeared at the hearing that the defendants had, since the filing of their answers, reduced the rate on shingles from Fredericton from 20 cents to 17½ cents per hundred pounds, and they claim that the reduction was rendered necessary by the fact that water carriers from Fredericton were taking a considerable portion of the shingle traffic under the 20 cent rate. The defendants were also allowed to amend their answers herein.

At the close of petitioners' testimony, counsel for one of the defendants moved to dismiss the proceeding on the ground that it appears from their own testimony that the petitioners, being merely commission merchants, suffer no particular damage, and that their profits do not depend upon the rates, except to the amount of about one dollar per car.

The petitioners, who are lumber merchants in the city of Boston, sell shingles on commission for manufacturers at Fort Fairfield and other points in the state of Maine, and in order to obtain the exclusive right to sell such shingles have paid to some manufacturers certain amounts of money in advance of sales. This course appears to have been followed by other lumber commission merchants in Boston, because, in order to secure the business of one of the manufacturers of Fort Fairfield, the petitioners were obliged to discharge his liability to

a rival commission firm for moneys paid in advance of sales on his account. The commission which petitioners obtain for selling shingles is, according to agreement, either upon the gross amount received for sales or upon the amount remaining after deducting cost of transportation and other items of expense which may attend the shipment of the shingles and delivery in Boston. The petitioners also appear in the light of shippers from Fort Fairfield, as shown by a schedule of shipments put in evidence.

The statute provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant." By advances of money to the shingle makers at Fort Fairfield they have substantial interest in shingle manufacture at that point; besides, while a reduction of rates may not materially increase their commission per carload, they have interest as commission merchants in whatever effect such reduction may have upon the number of carloads consigned to them. It also appears that some shingles in carloads have been sent by them as shippers from Fort Fairfield. The petitioners as commission merchants may be indirectly damaged by the freight rates in this case if found unlawful, and as shippers they in common with other shippers from the points in question have direct interest in such rates. The motion to dismiss must be denied.

The facts material to the decision of this case are as follows:

1. Fort Fairfield, Stevens' Siding and Hurd's Siding, all in the state of Maine, are situate near each other on the same line of railroad, take the same rate, and for the purposes of of this report may be considered as one. Fort Fairfield is located upon the Aroostook branch of the New Brunswick Railway, which is operated under lease by the defendant, the Canadian Pacific Railway Company. The Aroostook branch extends from Presque Isle 33 miles to a junction with the New Brunswick Railway at Aroostook, N. B. Traffic from Fort Fairfield destined to Boston is routed from Fort Fairfield easterly to Aroostook, seven miles, thence southerly *via* Debec and McAdam Junctions, 112 miles to Vanceboro, the point of junction with the Maine Central Railroad, in all a distance of

119 miles; thence by the Maine Central Railroad to Portland, 251 miles, and by the Boston & Maine from Portland to Boston, 108 miles, the total mileage being 478 miles.

It appears from a statement put in evidence by the defendants that the Aroostook branch does not yield sufficient revenue to pay operating expenses and full interest on fixed charges, the deficit from interest account for the year ending June 30, 1891, being \$12,195.31, and for the 6 months following \$9,723.99. While this branch is operated at a loss to the Canadian Pacific, yet according to the testimony of one of its officers and its principal witness, that company is enabled to continue present rates from points on the branch road on account of the traffic which that road gives to the main line; in other words, the Aroostook road as a separate line does not pay, but as a feeder to the Canadian Pacific system its operation is not unprofitable to that Company.

Shingle shipments constitute  $29\frac{1}{2}$  per cent. of the entire traffic over the Aroostook road, and only  $4\frac{1}{8}$  per cent. of the whole traffic is lumber, it being cheaper apparently to float logs down the Aroostook and St. John Rivers to Fredericton or beyond than to saw them in the Aroostook region and ship by rail at even the comparatively low rates on lumber now in force. The other traffic consists mainly of potatoes, starch, hay, bark and live stock. There is not much return traffic to points on this branch.

The manufacture of lumber and shingles at Fort Fairfield and other points on the Aroostook branch is affected by and is in competition with the manufacture of lumber and shingles at Fredericton and other points on the St. John river. Timber cut on the Aroostook can be floated down that river to its junction with the St. John and thence to any point on that stream, at but little additional expense over the cost of logs at Fort Fairfield. Logs cut on the upper St. John are also driven down to Fredericton and other St. John towns. The points on the Aroostook branch have a population of about 11,000 inhabitants. The manufacture of shingles has been an established industry at those points for a considerable number of years.

2. Fredericton is situate on the St. John river, in the province of New Brunswick, Canada, and traffic by rail therefrom to Boston is routed over the Fredericton branch of the New Brunswick Railway to Fredericton Junction, 22 miles, thence easterly by the New Brunswick road to Vanceboro, 45 miles, in all 67 miles; and from Vanceboro, the route to Boston is the same as above stated for traffic from Fort Fairfield making the distance from Fredericton to Boston 426 miles. The distance from Fort Fairfield to Boston is therefore 52 miles greater than that from Fredericton to Boston, and such difference arises wholly upon lines operated by the Canadian Pacific Railway Company. There is water communication between Fredericton and Boston, but what, if any, vessels run regularly between these points does not appear. Not much, if any, lumber or shingles are shipped made from Tracey or Russia-gornish, the points which take the same rates as those from Fredericton.

Fredericton has a population of between six and seven thousand, and there is no place of much consequence between it and Vanceboro, Me. While shingle mills have been in operation at Fredericton for some years it did not become an important point for the manufacture of that article until a large shingle plant was established there about five years ago.

3. The defendants are parties to joint traffic arrangements for the transportation of shingles and lumber from Fort Fairfield, Fredericton and the other points mentioned in the complaint to Boston and points taking Boston rates. The rates now in force on shingles in carloads from Fort Fairfield and Fredericton to Boston are respectively  $26\frac{1}{2}$  and  $17\frac{1}{2}$  cents per hundred pounds. At the time the complaint was filed these rates were  $31\frac{1}{2}$  and  $16\frac{3}{4}$  cents per hundred pounds. Before the answers were filed the rates were changed to  $26\frac{1}{2}$  cents from Fort Fairfield and 20 cents from Fredericton, but between that time and the date of hearing the Fredericton rate was reduced to  $17\frac{1}{2}$  cents, because, as defendants allege, and there is no evidence to the contrary, some traffic then went by vessel from Fredericton. Five small schooners were loaded with shingles while the 20 cent rate was in effect, but defendants

failed to show where the water shipments were destined and complainants did show that they were not carried to Boston. The tonnage of vessels which can reach Fredericton does not appear. It is asserted in the testimony that buyers and dealers prefer to get shingles by rail because they can keep a better assortment of different grades by obtaining their supply in small carload quantities; but if the shipments are by the water way they have ordinarily to replenish their stock by the cargo.

The rates to Boston on lumber from Fort Fairfield and Fredericton are, respectively,  $15\frac{1}{2}$  and  $14\frac{1}{2}$  cents per hundred pounds, and the lumber rate from Fort Fairfield is now 1 cent less than at the time the complaint was filed. Lumber and shingles are usually classified alike and take the same rates, but the reason for the difference in rates from Fort Fairfield is stated in the first finding. Not over a dozen cars of lumber are shipped from Fredericton during the year, most of the timber being floated to St. John. The rail rate on lumber and shingles from St. John to Boston, 44 miles farther, is  $16\frac{3}{4}$  cents per hundred, but the traffic goes by water. Since the  $26\frac{1}{2}$  cent rate on shingles from Fort Fairfield went into effect an agent of the Canadian Pacific has obtained letters from shippers on the Aroostook branch expressing themselves satisfied with that rate.

4. For the year ending July 31, 1891, there were shipped by rail from Fredericton 284 cars of shingles, and during the year following 400 cars were shipped, making 684 cars for the two years. For the same period about 2,000 carloads were shipped from the Aroostook division, and 541 of these were loaded at Fort Fairfield. Allowing 22,000 pounds to the carload and 200 pounds to the thousand shingles, this gives 75,240,000 shingles from Fredericton, and 220,000,000 from the Aroostook, of which 59,510,000 were sent from Fort Fairfield.

The following rates per hundred pounds have been in effect on shingles in carloads from Fort Fairfield to Boston from 1883 to the present time.

1883 to 1887, 35 cents; 1887 to 1889, 34 cents; 1889 to April 21, 1892,  $31\frac{1}{2}$  cents; April 21, 1892, to date,  $26\frac{1}{2}$  cents.



There was an understanding between the railroad people and the parties who built the one important mill at Fredericton about 5 years ago that a rate of  $16\frac{1}{2}$  cents per hundred pounds would be established from Fredericton in order to protect it from St. John competition. This was done, and with little variation the rate has been maintained ever since, it now being  $17\frac{1}{2}$  cents. This rate is not raised during the season of closed navigation, but is uniform the year round.

5. Shingle rates from Fort Fairfield and Fredericton to Boston are divided between the carriers as follows:

Fort Fairfield rate,  $26\frac{1}{2}$  cents per 100 lbs. Canadian Pacific, 119 miles, 40 per cent. The balance, 60 per cent. is apportioned between the other line on the basis of 70 per cent. to the Maine Central, 251 miles, and 30 per cent. to the Boston & Maine 108 miles.

Fredericton rate,  $17\frac{1}{2}$  cents per 100 lbs. Canadian Pacific, 68 miles, an arbitrary of \$5.00 per car, and then 23 per cent. of the remainder. After deducting the share of the Canadian Pacific, the main central gets 69.9 per cent. and the Boston & Maine 30.1 per cent. of the balance.

These divisions do not bear out the statement of a witness for the Canadian Pacific that that company gets more revenue out of the rate from Fredericton than from the rate from points on the Aroostook branch. It was stated by the witness that this was on account of the \$5.00 per car arbitrary on Fredericton shipments and that the average carload of shingles from Fredericton weighs 25,000 lbs., as against 22,000 lbs. per car from Fort Fairfield; this difference in weight is claimed to exist because Fredericton shingles are thinner and more can be loaded in a car. A carload from Fort Fairfield of 22,000 lbs. at  $26\frac{1}{2}$  cents amounts to \$58.30 of which the 40 per cent. share of the Canadian Pacific is \$23.32. A carload from Fredericton of 25,000 lbs. at  $17\frac{1}{2}$  cents yields a total revenue of \$43.75 out of which the \$5.00 arbitrary and 23 per cent. share of the Canadian Pacific is \$13.91. These divisions and differing carload weights do, however, produce a slightly higher rate per car per mile to the Canadian Pacific from Fredericton (20.76 cents) than from Fort Fairfield (19.60 cents.)

The evidence does not clearly support this claim of heavier carloads from Fredericton. It is difficult to understand how one carload of thin shingles can weigh much more than a carload of shingles somewhat thicker in size, unless the shingles are less dry or there is a difference in the size of the cars. It was not contended that the Fredericton shingles are not of standard size, though admitted to be somewhat thinner than the Fort Fairfield article; or that they are shipped in a wetter state; or that any reason exists for furnishing larger cars to Fredericton shippers.

Figuring on an average carload of 22,000 lbs. the rate of  $17\frac{1}{2}$  cents from Fredericton yields a gross sum per car of \$38.50, out of which the \$5.00 arbitrary and 23 per cent. of the remainder gives the Canadian Pacific for the haul of 67 miles to Vanceboro \$12.71, or 33 per cent. of the rate, and 1 cent and 7 mills per ton per mile; while the rate from Fort Fairfield of  $26\frac{1}{2}$  cents yields that Company, from its 40 per cent. share, a rate per ton per mile of 1 cent 7.8 mills for the 119 miles to Vanceboro.

This \$5.00 per car arbitrary allowed to the Canadian Pacific dates back to the time when the Fredericton Junction Railway, being separately operated, received that sum for its share of the service, and it has been continued ever since.

The rate per car (22,000 lbs.) per mile which the Canadian Pacific receives under present rates is about  $19\frac{1}{2}$  cents from Fort Fairfield and 19 cents from Fredericton.

The rate per car per mile for the whole distance to Boston is about 9 cents from Fredericton and a little over 12 cents from Fort Fairfield.

The rate per ton per mile produced by the  $26\frac{1}{2}$  cent rate from Fort Fairfield to Boston 478 miles, is a little over 1 cent and 1 mill. The rate per ton per mile from Fredericton to Boston, 426 miles, rate  $17\frac{1}{2}$  cents, is about 8.2 mills.

6. A considerable portion of the shingle timber used at Fredericton is floated down the Aroostook, but much of it is believed to come from the upper St. John. It is claimed and not disputed, that practically no shingles are made at Fredericton from Canadian lumber. Shingles made at Fredericton

from American timber are admitted into the United States free of duty.

The average value of cedar shingles of all grades in the Boston market is about \$2.50 per thousand, or from \$250 to \$275 per carload. At Fort Fairfield the value per car is stated to be about \$70.00 less, this sum representing cost of shipping, transportation, delivery, selling commissions, and similar expenses. The value of a carload of shingles at Fredericton is not shown. Assuming milling expenses to be similar at Fort Fairfield and Fredericton and that logs at the place of cut cost each the same, the greater value of a carload at Fredericton can be estimated by considering the difference in rates to Boston in favor of Fredericton less the excess cost of shingle timber at the Fredericton mills.

The following unverified statement was put in evidence by the defence as showing the cost per thousand feet of Aroostook shingle timber in the mill of the principal shingle manufacturer at Fredericton:

Estimate showing cost per M. of logs delivered at Phoenix Mills, Fredericton, N. B.:

Stumpage on Cedar Logs. ....	\$2.50	per M.
Hauling Logs to Bank of Stream and River.....	6.50	" "
Driving Logs to Madawaska Log Driving Co.'s Limits...	1.00	" "
Tolls Madawaska Log Driving Co.....	19	" "
L. W. Pond's Sheer Boom Tolls.....	11	" "
Tolls St. John River Log Driving Co.....	35	" "
Fredericton Boom Co. Rafting Charges.....	2.00	" "
Freighting from Booms to Mill.....	42	" "
Total.....	\$18.07	" "

Complainants' principal shipper testified in regard to the cost of shingle logs in his mill at Fort Fairfield, but his testimony was somewhat indefinite as to some items and he was subsequently requested by the Commission to supplement it with an itemized and duly verified statement of such cost. The following items appear in the statement which was thereupon filed:

Statement showing cost of 1,000 feet of cedar logs at H. Stevens & Co.'s Mill:

Stumpage—average for 1892.....	\$2.75	per M.
Scaling in Woods .....	08	“ “
Landing Logs on Bank of Stream .....	6.50	“ “
Driving Logs to H. Stevens & Co.'s Mill.....	1.65	“ “
L. W Pond, Boom Fees .....	10	“ “
Rafting, Sorting and other necessary Expenses on Logs at Mill.....	1.25	“ “
Expense of Keeping Boom, Piers and Dam in Repair....	50	“ “
Total.....	\$12.83	“ “

In the latter list the first item is \$2.75 for “Stumpage, average for 1892,” and the second is 8 cents for “scaling in woods,” while in the statement of the Fredericton shipper the cost of stumpage is put at \$2.50, and there is no charge for scaling. These two statements were made out at different times, the first in August, 1892, and the other in February, 1893, and it may well be that the average stumpage cost to the Fredericton shipper for 1892 was as much as the average stated by the Fort Fairfield manufacturer. The last item in the latter statement is 50 cents per thousand for “keeping boom, piers and dam in repair,” but no item in the Fredericton shipper’s statement relates to such expense. The difference of 25 cents in cost of stumpage and the items of 8 cents for scaling and 50 cents for repairs, above mentioned, should not therefore be considered in comparing the two lists with a view of arriving at an estimate of the difference in the cost of logs in the respective mills. With those charges excluded the difference between the two statements is \$1.07 cents per thousand in favor of Fort Fairfield. It does appear, however, and it should be noted, that the river current at Fort Fairfield is much swifter than at Fredericton and that it is more difficult to handle logs and booms in the Aroostook region than at the latter point: that the Fort Fairfield shipper maintains from 16 to 20 piers in the river and also a boom every year, and he distinctly testifies that the expense of handling logs at that point is as much as the boom charge at Fredericton, taking all the expenses into account. Estimating the difference in cost of logs in the mills at the two places at \$1.00 per thousand feet in favor of Fort Fairfield, and as one thousand feet of timber will make an average of ten thousand shingles, each thousand being estimated to weigh 200 pounds, this gives Fort Fairfield the advantage in cost of about 5 cents per hundred pounds. But

on the other hand, Fredericton has an advantage in rates of 9 cents per hundred, and therefore, this estimate would give it a net benefit in the matter of cost and rates of 4 cents per hundred pounds, 8 cents per thousand shingles, and (reckoning 22,000 lbs. to a car) \$8.80 per carload.

#### CONCLUSIONS.

The important question presented for decision is whether rates charged by defendants for the transportation of shingles give undue preference or advantage to Fredericton, or subject Fort Fairfield to undue prejudice or disadvantage in its competition with Fredericton in the shingle industry, the shipment of that commodity, and its sale in the Boston market.

Fort Fairfield is more advantageously located than Fredericton with reference to the place where the timber is cut and the cost of driving logs to and getting them into the mills. On the other hand, Fredericton is more favorably situated as to facilities for the transportation of the manufactured article to the markets, for it is somewhat nearer in point of distance, and being located on the banks of a navigable stream, it can apparently, if pressed by high rail rates, send its traffic by vessel to market ports. We say that water transportation for shingle traffic *apparently* threatens the defendants at Fredericton, for the testimony does not present facts pertinent to this question sufficient to form the basis of a positive opinion. We only know by the proof that a river runs past Fredericton to the sea, and that five small schooners were loaded with shingles during the short time after this complaint that a 20 cent rate was in effect on that commodity to Boston, and that they did *not* go to Boston. Where did those schooners go? Why was no Fredericton shipper called to testify in this case? Why is it that defendants failed to show the shipment of a single cargo of shingles from Fredericton to Boston or any other *named* point at any time? What draft vessels can navigate loaded from Fredericton, and what is the depth of the channel at different states of the tide? Is the statement incontrovertible which we find undisputed in this case that buyers and dealers prefer their shingles to come by rail because of quick transit, smaller shipments, and ability to keep

greater assortment of different grades within the compass of a smaller stock than would be necessary if they received them by sea; and if true, is such preference strong enough to induce the great majority of consignees to pay a considerably higher rate of freight? Were those schooner loadings at a critical time after all nothing but a sharp practice of the Fredericton shingle shipper to induce a return to the old and favorable Fredericton rate? Indeed, for anything we know to the contrary, these schooners might have been destined no farther than St. John. Though answers to these interrogatories are material to a solution of the question "whether water competition of controlling force in respect to traffic important in amount" exists for shingle transportation from Fredericton, they are not answered by the evidence.

When water competition is alleged to justify rates in any case under the statute, the carrier must affirmatively show by proof which has more than the effect of presumption and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the point in question.

Defendants' principal witness testified that the reason for making the 16½ cent Fredericton rate, when the one important mill was built there, was to protect Fredericton from the competition of St. John, located on the coast, 44 miles from Fredericton, and the eastern terminus of the Canadian Pacific line. At the time this complaint was brought the rail rate on shingles from St. John was 16¾ cents, and that rate was also in force at Fredericton. That charge was and is insufficient to hold any shingles to the rail line at St. John, but at Fredericton it was controlling, and under that rate the roads took the traffic. Water transportation being a controlling and even a monopolizing competitor for shingle carriage from St. John, and Fredericton being situate but a short distance from St. John and upon a river which is claimed to be open from Fredericton to navigation by sea going vessels, why is it that the rail rate which cannot secure from the water carriers any traffic from St. John, can have such overpowering effect at the near by town of Fredericton, as to hold traffic from that

point to the rail line? The evidence does not answer this question. Moreover, the 16 $\frac{3}{4}$  cent rate at Fredericton has, since this complaint was brought, been voluntarily increased by defendants to 17 $\frac{1}{2}$  cents per hundred pounds, without apparent effect upon the volume of rail traffic from that place.

Although water competition may threaten rail carriage from Fredericton, the case, in our opinion, presents a broader standard of rate adjustment than that of possible water transportation from that point, and this is that which defendants themselves employ in fixing and maintaining the charge from Fredericton. We think that the facility with which Maine logs can be driven down the rivers to St. John, at comparatively slight additional cost above such cost to Fredericton, and the fact that water competition at St. John is so influential as to debar the roads from obtaining any shingle or lumber traffic at that point, are really the controlling reasons for the low Fredericton rate. The interests of Fredericton were identical with the interests of the carriers themselves, for, if putting the nominal St. John rate in force from Fredericton would enable the manufacturers at that point to profitably saw shingles and ship them over the more convenient and preferable rail route, it was not only good business policy on the part of the carriers, but a proper recognition of the shingle interests of Fredericton to establish a low but profitable rate at that point and "protect it from the competition of St. John."

Fort Fairfield shingle makers are likewise affected by the cheap log-drive, and are also active competitors of Fredericton and St. John sawyers for the sale of shingles in the large Boston market. Aroostook river shingle timber is driven down that stream past Fort Fairfield and thence down the St. John river past Fredericton to St. John and the sea. The same carrier serves St. John, Fredericton and Fort Fairfield, and if Fredericton is entitled to protection in its competition with St. John, then Fort Fairfield has also the right to demand, and the carriers have equal advantage in affording to that point, reasonable protection in its competition with Fredericton and St. John.

The defendants contend that the difference in rates is nothing more than the difference in cost of timber in the mills. Even



if the evidence fully sustained that contention, it would not be a justification for the disparity in rates. Each locality is entitled to have and retain as against all other localities the benefits which naturally accrue to it by reason of its advantageous location. *Eau Claire Board of Trade v. Chicago M. & St. P. R. Co.* 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 264; *Minneapolis Chamber of Commerce v. Great Northern R. Co.* 4 Inters. Com. Rep. 230, 5 I. C. C. Rep. —. This principle was surprisingly well expressed by a Fort Fairfield shingle manufacturer while testifying in this case. In answer to a question of defendants' counsel during cross-examination, he said: "I can't see, if the Fredericton lumber costs 5 cents more a thousand, why you should charge me that extra 5 cents." The higher rate from Fort Fairfield must be justified on some other ground than that of greater cost of production at Fredericton or be reduced. Fort Fairfield, Fredericton and St. John are competing points; the Fredericton rate is fixed, not by relative cost of production, but with respect to the traffic conditions which prevail at St. John; and, according to its situation, Fort Fairfield rates should be made with like reference. Keeping these main points in view, what, under all the circumstances, is a relatively fair and reasonable rate from the latter point?

Fort Fairfield is located on a branch line of one division of the Canadian Pacific System. Fredericton is located on a branch line of a different division of that system. The two divisions join at McAdam Junction, a few miles from Vanceboro, where the Maine Central connects and takes the traffic; the distance of Fort Fairfield from Vanceboro is 119 miles, while that of Fredericton from Vanceboro is 67 miles. There is no definite proof in this case that it costs materially more *per mile* to operate the Vanceboro-Fort Fairfield line than to operate that which reaches Fredericton. We are asked to infer such greater cost from the interior situation of Fort Fairfield and the fact that the short Aroostook branch road does not pay full interest on its bonded indebtedness. There is no testimony showing the financial condition of the line through Vanceboro to St. John and that of the Fredericton branch, or that of the line running north from Vanceboro with

which the Aroostook branch connects at Aroostook Junction; nor is there any testimony showing the character of grades or material variation in expense of operation. The Canadian Pacific does not make separate annual reports to this Commission for these different branches or divisions. A departure from equal mileage rates on different branches or divisions of a road is not conclusive that such rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. *Logan v. Chicago & N. W. R. Co.* 2 Inters. Com. Rep. 431, 2 I. C. C. Rep. 604.

The answer of the Maine Central avers that the Fredericton rate is not remunerative in itself, but that it does afford some profit above cost to the carriers by holding not only shingle but other traffic to the rail lines which would otherwise be encouraged to seek carriage by water; and that a large amount of freight is secured from new business built up by shippers, the outgrowth of their exclusive patronage of the rail lines. If this portion of the answer was directed to the 16 $\frac{3}{4}$  cent shingle rate in force when complaint was made, the defendants have added to their profits by the advance of  $\frac{3}{4}$  of a cent above that rate; besides, we have seen that they have a nominal rate of 16 $\frac{3}{4}$  cents in effect for 44 miles longer haul from St. John, and while they do not get business under that rate, they advertise that charge to the public as a rate for which they are *willing* to take shingles from St. John. In the absence of proof to the contrary we must accept the averment that the rate from Fredericton is profitable, if not in itself, then as a factor in developing business at and traffic to and from that point.

Shingles are low grade freight. The rate from Fredericton yields a through rate per ton per mile to Boston of 8.2 mills, and under the divisions between the carriers, a rate per ton per mile to the Canadian Pacific of 1 cent and 7 mills; that is to say, for 67 miles haul this company gets more than double the rate per ton per mile produced by the through rate for the whole distance. It is further observed that after deducting its share of the Fredericton charge, which the findings show amounts to about one third of the whole charge, the other two roads divide the balance in the proportion of 70 per cent. to

the Maine Central for 251 miles and 30 per cent. to the Boston & Maine for 108 miles, and a slight calculation will demonstrate that this division is strictly upon a mileage basis, for 70 per cent. of the added mileage is almost exactly 251 miles, and 30 per cent. is then of course very nearly 108 miles.

Taking now the Fort Fairfield rate we find that the through rate per ton per mile to Boston is 1 cent and 1 mill, and that under the divisions between the carriers, the Canadian Pacific gets 1 cent and 7.8 mills per ton per mile for its distance of 119 miles. This is 8 tenths of a mill more per ton per mile than it gets out of the Fredericton rate for 67 miles. The percentage share of this road out of the total charge is 40 per cent., the other roads dividing the remaining 60 per cent. upon the mileage basis shown above. This analysis of the rates per ton per mile and divisions between the carriers shows that if the through rate from Fredericton is not particularly profitable, it is, nevertheless, under the basis of division, much more profitable to the Canadian Pacific than to its connecting roads, and that the basis on which both the Fort Fairfield and Fredericton rates is divided between the carriers is by arbitrary (either fixed or percentage) deduction of the Canadian Pacific share, and a pro-rating of the balance on a mileage basis; so that from Fort Fairfield that company for 25 per cent. or one fourth of the distance gets 40 per cent. or two fifths of the rate, and from Fredericton for about 16 per cent. or not quite one sixth of the distance it gets 33 per cent. or about one third of the rate.

The apportionment of a rate to different parts of a through line does not determine the charge to the public, but it may be significant on the question of a reasonable rate for the whole distance. *Brady v. Pennsylvania R. Co.* 2 Inters. Com. Rep. 78, 2 I. C. C. Rep. 131. When the reasonableness or the relative reasonableness of charges is challenged every material consideration which enters into the making of such charges is pertinent to the inquiry.

From what has been said it is apparent that the Canadian Pacific receives an extremely liberal share of either through rate as compared with those accepted by the other carriers; and it is also clear that any reduction which may be ordered

need not be chiefly borne by the other roads; but how such reduction should be accomplished is matter for the carriers to determine among themselves. *Boston Fruit & Produce Exch. v. Pennsylvania R. Co.* 3 Inters. Com. Rep. 604, 5 I. C. C. Rep. 7; *Georgia Railroad Com. v. Clyde SS. Co.* 4 Inters. Com. Rep. 120, 5 I. C. C. Rep. 324. This brings us to a statement in the answers of the defendants that if any reduction of the Fort Fairfield rate should be required the Canadian Pacific would be forced to take shipments of shingles from points on the Aroostook branch only at local rates. That company may do this, but if the shipment or carriage is still continuous from Fort Fairfield to Boston, the mere circumstance that it insists on its local rate for its share of the through charge will not avail if the total charge is unreasonable. *Georgia Railroad Com. v. Clyde SS. Co. supra.* And whether such action would operate to give undue preference to other points from which it is a party to lower through rates or to an arrangement for continuous carriage or shipment is a matter to which it would doubtless feel obliged to give due consideration.

The essential question here is one of relatively reasonable rates; not whether either rate is reasonable in itself. It is the effect of the carriers' action at one point upon the legitimate business prosperity of another point, which is the vital point in this controversy. If the present Fredericton rate does not actually result in profit, the carriers should not seek to control or stimulate traffic from that point by making the rate so low; and if they carry for unusually small compensation from that place they do so under the plain injunction of the law that their action must not inflict undue prejudice or disadvantage upon other communities or persons. When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives less rates from some patrons and at some localities, it accepts the legal obligations to give impartial service to other patrons and at other localities that sustain similar relations to the traffic. *Manufacturers & Jobbers Union v. Minneapolis & St. L. R. Co.* 3 Inters. Com. Rep. 115, 4 I. C. C. Rep. 79.

Applying this principle to the situation here and considering that the controlling influence upon traffic in this case is shingle

manufacture at and water competition from St. John, and that the effect of such competition at Fort Fairfield is only less in degree than at Fredericton, we must hold that a rate from Fort Fairfield, on such low grade freight as shingles, which is 50 per cent. higher than the rate in force on that commodity from Fredericton, is not justified by the mere fact that Fort Fairfield is located 52 miles farther than Fredericton from the market and upon a branch road unremunerative as a separate line. That road is short in length and its operation is not unprofitable to the main line; it is regarded and worked as a "feeder" to the Canadian Pacific system.

While it is evident that Fort Fairfield is entitled to some reduction from the present rate of  $26\frac{1}{2}$  cents, just how much the rate should be reduced is difficult to determine. It might with some reason be held that a rate per ton per mile of 8.2 mills produced by the Fredericton rate of  $17\frac{1}{2}$  cents, though not very profitable from that point for the distance of 426 miles to the market, is a sufficient rate per ton per mile for the distance of 478 miles from a competing locality in the same territory to the same market; the rate per ton per mile rule being that while the aggregate charge should increase with distance the rate per ton per mile should decrease; but upon all the facts we believe that the proper relation of these rates is indicated by the defendants' own action soon after this proceeding was instituted. Immediately after the complaint was filed they reduced the Fort Fairfield rate to  $26\frac{1}{2}$  cents and raised the Fredericton rate to 20 cents, and they alleged as a reason for subsequently lowering the latter rate to  $17\frac{1}{2}$  cents that the traffic from Fredericton began to go by water. While the evidence is not sufficient upon this point we do not question that under the 20 cent rate *some traffic went somewhere by sea*; but we have seen that Fort Fairfield occupies a definite relation to the Fredericton shingle industry and to St. John water competition by reason of the facility of driving shingle logs down the river to the coast, and we think an adjustment which the defendants voluntarily established and attempted to continue cannot be unfair to them and should be enforced by transferring the  $2\frac{1}{2}$  cent reduction to Fort Fairfield, unless they prefer again to put in the 20 cent rate at Fredericton; for

it is the relation of rates which constitutes the question in this case, and defendants can at their option make that relation reasonable by raising the latter or lowering the former rate, provided neither rate is made unreasonable in itself. This, on the basis of 22,000 lbs. to the car-load, will amount to a difference of \$5.50 per car.

Our reason for not comparing lumber rates with shingle charges in this case will appear from the following statement of the conditions which govern lumber transportation from the points in question. Notwithstanding lumber rates are as low as 15½ cents from Fort Fairfield, and correspondingly low from other Aroostook branch points, shipments of lumber over that branch do not constitute more than 4½ per cent. of its traffic, and at Fredericton, where the rate is only a cent lower, not over a dozen cars a year go by rail. The obvious conclusion is that the tendency of the timber traffic to seek the cheap means of the log drive to the coast, and thence by sea, either in the form of log or sawed into lumber, cannot be overcome by any rates the railroads can afford to make. Yet, despite this natural tendency, the evidence shows that under the relatively favorable rate from Aroostook points considerable lumber *does* go by rail, and that practically none is shipped from Fredericton, and this is a clear indication of recognition on the part of the rail carrier of the favorable situation of Aroostook branch points in respect of distance from the timber cut and cost of logs in the mills; and further, of the controlling force of the log drive upon lumber traffic and rates. The river drive operates with stronger force upon the lumber than upon the shingle trade. Why this is so the testimony does not show, though various reasons deducible from general knowledge might be stated; but it is idle to speculate as to the cause when the fact itself is sufficient for the purpose in view. The lumber rates have not been regarded as a standard by which to judge of the legality of shingle rates in this case, because it is shown that the river drive has materially different effect upon the manufacture and shipment of the two articles.

Before concluding this report we desire to say that the fact of Aroostook shingle shipments being considerable, under rates

in force for the last two years, is not a sufficient answer to the charge of undue disadvantage which we find sustained; nor is such answer strengthened by the further fact that several shippers on the Aroostook have, willingly or otherwise, expressed themselves satisfied with present rates. Whether Aroostook shingle men have been prospering under adverse rates, or whether some of them are content with present rates, does not determine the main question. The aim of this report is not to ascertain the measure of their prosperity, or how high rates their industries will stand; its purpose is to determine their rights.

There are some other facts which ought to be noticed. The timber from which shingles are made both at Fort Fairfield and Fredericton is grown in the state of Maine. No Canadian timber of any consequence is sawed at Fredericton. The shingle industry has greatly developed at this point since the year 1887, and one rate has, with little variation, been in effect from that point during all that time. It was originally  $16\frac{1}{2}$  cents; when this complaint was brought it was  $16\frac{3}{4}$  cents, and now it is  $17\frac{1}{2}$  cents. At Fort Fairfield the rate from 1887 to 1889 was 34 cents; from 1889 to April, 1892, it was  $31\frac{1}{2}$  cents; and following the institution of this proceeding it was made and now is  $26\frac{1}{2}$  cents. During the year ending July 31, 1891, Fredericton shipped 284 cars; and the year following its shingle shipments increased to 400 cars, a total of 684 cars for the two years. The hardship entailed upon Aroostook river points was so manifest that the defendants themselves, at the time of complaint, saw the necessity of a large reduction of the  $31\frac{1}{2}$  cent rate; and while that reduction was, as defendants' contend, a voluntary concession, yet, having followed shortly after the complaint, it can be regarded in no other light than as a concession which Fort Fairfield and other Aroostook points were entitled to as a matter of right. The present difference in rates of 9 cents a hundred against Fort Fairfield, amounting on, say 250 cars a year, to nearly \$5,000, it seems to us is unduly prejudicial to that point in favor of Fredericton, and a difference that would be nearly, if not quite, unbearable if it were not for the less cost of logs in the mills. The reduction to be ordered will reduce this amount



by about \$1,400. Whether this is all Fort Fairfield is entitled to we have some doubt ; but considering the character of the lines, the sparsely populated country through which they pass, and the fact that neither of the present rates can be considered unreasonable in itself, that amount of reduction is as much as we feel called upon to require.

The claim for reparation in this case was for a refund of the excess over reasonable charges collected by defendants subsequent to complaint. The substantial reduction announced by the carriers soon after the proceeding was instituted was intended by them to satisfy the complaint, and we are not satisfied, because that reduction as finally fixed was accidentally insufficient, that the order for further reduction should have retroactive effect. The claim for reparation must be denied.

The substance of the order based upon the conclusions herein stated will be that defendants cease and desist from charging or receiving for the transportation of shingles in carloads from Fair Fairfield, Stevens' Siding, and Hurd's Siding in the State of Maine to Boston in the State of Massachusetts and points taking Boston rates, any greater aggregate rate per hundred pounds than is found and obtained by adding 6½ cents per hundred pounds to the rates contemporaneously in force over their roads for the transportation of shingles in carloads from Fredericton, in the Province of New Brunswick and Dominion of Canada, to Boston and the Boston rate points aforesaid.

JOHN W. S. BRADY AND GEORGE T. PARKHURST,  
PARTNERS, TRADING UNDER THE FIRM NAME OF J. PARK-  
HURST & CO., V. THE PENNSYLVANIA RAILROAD  
COMPANY, THE PENNSYLVANIA COMPANY, THE  
PITTSBURGH, CINCINNATI & ST. LOUIS RAIL-  
WAY COMPANY.

AND

JOHN HENRY NICOLAI, TRADING AS "EAGLE OIL  
WORKS," V. THE PENNSYLVANIA RAILROAD  
COMPANY, THE PENNSYLVANIA COMPANY, AND  
THE PITTSBURGH, CINCINNATI & ST. LOUIS  
RAILWAY COMPANY.

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Application by defendants for Rehearing.

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JAMES A. LOGAN, for Defendants, in support of application.  
JOHN HENRY KEENE, for Complainants, in opposition thereto.

MEMORANDUM.

*By the Commission :*

The original complaints and answers in these cases presented one and the same question substantially, and they were, by consent of parties, tried together. The complaints were filed November 28, 1887, and alleged that between April 27 and September 1, 1887, the defendants charged complainants 50 cents per barrel of 45 gallons of oil shipped from Washington, in Washington county, Pennsylvania, by way of Pittsburgh, to Baltimore, Maryland, and that the said charge of 50 cents was unjust and unreasonable to the extent of 10 cents per barrel.

Complainants further alleged that at the time said alleged excessive charge of 50 cents was being made by defendants they were (and, as the proof shows, one of them, the Pennsylvania Railroad Company, was) carrying oil to Baltimore from Bradford, Clarendon, and points in the Bradford oil field, about the same distance from Baltimore as the Washington oil field, at 40 cents per barrel of 45 gallons, and that this difference of 10 cents per barrel in the transportation rates and charges from the Washington and from the Bradford oil fields "are not based upon any reasonable or just foundation whatsoever."

In their answer, the defendants averred "that said charge of 50 cents is just and reasonable considered by itself or compared with the rates from Bradford, Olean and Clarendon," for the reason, as they further averred, that the traffic in passing through the city of Pittsburgh was moved the length of two railroad yards, which movement was slow and expensive, and that "the hazard because of liability to ignition in passing through said city of Pittsburgh was great to the company."

In their petition for rehearing, the respondents present several grounds for their application, but in the main their motion is based upon:

"First: That the superior quality of the oil produced in the Washington oil fields, as compared with the oils produced in the Bradford and Olean districts, justifying a larger charge for the former, although adverted to in the testimony, was not sufficiently developed in the evidence, and was not sufficiently considered by the Commission in determining the case.

"Second: The fact of adverse gradients on the line over which the Washington oil passed, and favoring gradients on the line over which the Bradford and Olean oils passed, although presented by the testimony, was not given weight by the Commission, inasmuch as the report says, 'they (defendants) did not call to their aid any alleged difference in grade, volume of business or other causes which affect the cost or transportation.'"

It is true that the superior quality of Washington oil was "adverted to in the testimony." The officers and agents of the defendant companies in their testimony went extensively into the nature of the traffic and the circumstances attending it, including the slightly greater value of Washington oil, the alleged risk of passing through the city of Pittsburgh and the extensive yards of the Pennsylvania Railroad Company, the heavy grades passed over in going up the mountains, and the care necessary to be taken in going down. Except the alleged risk of passing through Pittsburgh, these questions were not raised by the complaint or answer, but were taken into consideration in connection with all the facts by the Commission before the findings and order of the Commission were made.

The motion for rehearing is apparently based chiefly upon the following statement contained in the opinion, or conclusion of the Commission.

"The defendants justify the fifty-cent rate as reasonable on the alleged hazard and liability to accident in carrying oil through Pittsburgh, and on this alone. They do not call to their aid any alleged difference in grades, volume of business, or other causes which affect the cost of transportation."

In the argument of counsel in support of the motion for rehearing the respondents insist that this statement shows that the question of gradients was not given weight by the Commission. This is an erroneous view of the matter. All that was meant or intended by this language used in the opinion was that the respondents by assigning the alleged slow movement and expense of passing through their Pittsburgh yards and the hazard and risk of passing through Pittsburgh city alone as reasons in justification of the 50 cent charge, relied upon these reasons alone, and did not deem any other to have any bearing on the subject. No other was set up in the answer, and no argument was made claiming any other. As shown by the opinion in facts found, the controversy and correspondence between complainants and defendants as to the oil rates from Washington had been going on for two or more years, and in that correspondence the superior quality and commercial value of the Washington oil was always assigned as the justification for the higher transportation charge on the Washington oil. In that correspondence neither the expense of passing the yards, nor the risk which was assigned in the answer as justification, nor the gradients, was mentioned or "was given weight" by the respondents themselves. It was by the testimony of the officers of the Pennsylvania Railroad System shown that the general cost of transportation is "getting down." The rate from Washington, Pa., to Baltimore was never higher than 50 cents, though it had been lower. The Commission was of opinion that it should be lowered to 40 cents, and so ordered, and is still of opinion that that is as high as the rate may reasonable be, and that the Commission correctly so found. The motion for a rehearing must, therefore, be denied.

**CHARLES H. BROWNELL V. COLUMBUS & CINCINNATI MIDLAND RAILROAD COMPANY.**

**W. R. SCHRIEVERS AND FIFTY-TWO OTHERS, CLAIMING TO BE LARGE DEALERS IN EGGS; JACOB GUAGI AND TWO HUNDRED AND NINETY-FIVE OTHERS, CLAIMING TO BE SMALL DEALERS IN EGGS; CLARK A. POST AND FOUR HUNDRED AND TWENTY-ONE OTHERS, CLAIMING TO BE FARMERS, AND AMONG OTHER THINGS, PRODUCERS OF EGGS AND SELLING EGGS TO LOCAL DEALERS IN SMALL QUANTITIES, INTERVENORS AS COMPLAINANTS.**

**THE PITTSBURGH, CINCINNATI & ST. LOUIS RAILWAY COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, INTERVENORS AS RESPONDENTS.**

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Complaint filed, March 29, 1889.—Answer filed, April 22, 1889.—Hearings at Toledo, Ohio, May 24, 1889.—Indianapolis, Ind., Sept. 17, 1889.—Case ordered re-opened, May 24, 1890.—Additional testimony taken at Cincinnati, Ohio, May 3, 1892.—Petitions for leave to intervene filed, Feb. 6-10, 1892.—Briefs filed, July 11, 1889, and May 25 to Oct. 5, 1892.—Decided, April 1, 1893.

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1. Unreasonable or unjust classification of a commodity is not shown by evidence of lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value or general character. The proper method of comparison is the classification accorded by the carriers to analogous articles.
2. When an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give a lower classification for car-loads than that which is applied to less than car-load quantities, but the difference in such classification should not be so wide as to be destructive to competition between large and small dealers. *Thurber v. New York Cent. & H. R. R. Co.* 2 Inters. Com. Rep. 742, 3 I. C. C. Rep. 473, cited and reaffirmed. The justice of a claim for a lower rating on carload lots can only be determined upon the facts in each case.
3. When on complaint of a carload shipper unjust discrimination is alleged to result from equal rates on carload and less than carload quantities of the same commodity, the burden of proof is upon the complainant.

4. Upon complaint alleging unjust discrimination against carload shippers of eggs in favor of shippers in less than carloads, it appeared that under the "official classification" eggs take second class rates for carload or less quantities; that the commodity is carried in refrigerator cars; that for carload shipments ice to the amount of 6,000 pounds is furnished by the carrier without extra charge; that less than carload shipments are taken from local stations in "pick up" cars to distributing points and forwarded in carloads to New York and other large markets; that notwithstanding the special facilities afforded to small shipments by the carriers, the large dealers control 83 per cent. of the traffic. Held, upon all the facts in the case, that no unjust discrimination results to the carload shipper from the equal rating of carload and less than carload lots and the special service rendered in gathering and forwarding small shipments, and the complaint should therefore be dismissed.
5. Power of concentrated business interests to force concessions in transportation rates which operate to the disadvantage of the general public discussed.

*Hon. J. B. Foraker*, for Complainant.

*H. L. Bond, Esq.*, for the Columbus & Cincinnati Midland R. R. Co. and the Baltimore & Ohio Railroad Company.

*J. T. Brooks, Esq.*, for the Pittsburgh, Cincinnati & St. Louis Railway Company.

*H. H. Poppleton, Esq.*, for the Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

#### REPORT AND OPINION OF THE COMMISSION.

*McDILL, Commissioner:*

This complaint was filed March 29, 1889. The case was partially heard at Toledo, Ohio, on the 24th day of May, 1889, and for the purpose of taking more testimony on the part of both complainant and defendant, the hearing was continued at Indianapolis, Indiana, on the 17th of September, 1889. At that point the complainant appeared in person, but the defendant was not represented. Amongst other things there done the complainant filed questions in writing which he wished to be submitted to the chairman of the Central Traffic Association for answer. The case was to have been submitted upon the receipt by the Commission of answers to the questions so filed, and such answers were filed on the 30th of September, 1889.

After examination of the record at that time, the Commission found that it was claimed that it would be for the advantage of ordinary producers of and local dealers in eggs to have

carload lots transported at less rates than was charged for quantities in amount less than carload lots; and that they, with the larger dealers, preferred to have such less rates for carload lots, and there having been little or no testimony introduced upon which to base this claim; it being also claimed that many railroad officials agreed that there should be a less rate on full carload lots than for less than carload lots; and the case having been tried in a somewhat irregular manner whereby the petitioner might have been misled in the manner of putting in the evidence on his part, it was ordered that the case be re-opened for the purpose of enabling both parties to present further evidence bearing upon the above claims.

As a result of this order, the intervenors mentioned as intervening complainants filed what they styled petitions; and the issues being made up, the case came on for hearing at Cincinnati, Ohio, May 3, 1892.

The complaint is that the defendant, the Columbus & Cincinnati Midland Railroad Company refuses a carload rate on eggs when a car is shipped from one consignor to one consignee, while a carload rate is granted on sugar, coffee, starch, soap, oranges, celery, pumpkins and squashes, thereby discriminating against eggs; and that the rate on eggs in carloads of 20,000 pounds weight from Washington Court House, Ohio, to New York, is \$107.00, and is unreasonably high and excessive when compared with carload freights to New York.

The original respondent, by its General Superintendent, answered April 15, 1889, admitting that eggs were carried at one rate, regardless of quantity, and alleging that the rate is in accordance with the classification of the Trunk Lines (over some one of which eggs must go from Washington, C. H. to New York); denying that thereby any discrimination is worked, but alleging that the common rate to all persons, whether shipping by the carload or in less than carload lots, is in the line of public policy, treating all shippers alike; and denying that on 20,000 pounds, that being the weight of a carload of eggs, the rate from Washington Court House to New York, being 53½ cents per 100 lbs., or \$107.00, is unreasonable.

The several intervenors described as "large dealers in eggs, small dealers in eggs, and farmers or producers of eggs," filed



petitions stating that they are of the opinion that it will be for the best interests of all of the producers and local dealers, and also the railroads, to have a different and reasonably lower classification on eggs shipped in proper carload lots than is now charged for eggs in less than carload lots, over the railway lines from such points as Washington C. H., Wilmington, London, Xenia, Greenfield, and other such points in Ohio and other Western States, to New York and other cities in the east.

There are some things in the appearance of these intervening petitions that might indicate that the signers did not clearly apprehend the nature of the questions involved.

One of the signers under date of January 26, 1892, addressed the Interstate Commerce Commission saying that "he was asked a few days before to sign a petition for a lower classification on eggs than is now charged by the railroad companies. That he signed the petition thinking it called for a reduction in classification of eggs in a local way as well as in carloads. That he has discovered since that the petition is misleading in this respect and that it really asked for a lower rate in carload lots than is charged in a local way. If such is the case, he states he is bitterly opposed to any such measure, as such an Act would certainly as nearly monopolize the trade as anything that could be done."

Upon the order above mentioned being made, various railroad companies engaged in the service under consideration were notified of the order and the scope of the proposed hearing, and in consequence thereof, The Pittsburgh, Cincinnati & St. Louis Railway Company, The Cleveland, Cincinnati, Chicago & St. Louis Railway Company and The Baltimore & Ohio Railroad Company appeared and were made parties to the proceeding as intervenors and defendants.

The first question presented is whether the rate of 53½ cents per cwt. for eggs from Washington Court House to New York is unreasonable and excessive, as compared with other carload rates upon products mentioned in complainant's petition, so as to create an unjust discrimination against large dealers in eggs, and in favor of the small dealers. If the evidence fails to establish this proposition, the complainant, it would seem, must fail, for both in the production of testimony and in his

argument the complainant has sought to establish his contention by a comparison of the charge upon a car of eggs of 20,000 pounds weight with other carload rates on other articles. These rates as set forth in a table attached to Mr. Brownell's first statement are carload rates upon cranberries, peanuts, tobacco, dried corn, fish, fresh or frozen, biscuit, bread, yeast cake, ginger ale, condensed milk, cocoanuts, celery, cucumbers, coffee, starch, soap, kraut, hops, oranges, lemons, beeswax, mince-meat and dressed beef.

Complainant has also filed what is called a comparison between the Western and Official Classification, showing, as it is claimed, that almost every other farm product except eggs and dairy products has been awarded a classification by which it is granted a carload rate less than the rate charged to those who ship in less than carload quantities, and it is contended that eggs are unequally treated and improperly discriminated against by reason of not having a carload rate. With reference to the comparison sought to be made between eggs and such articles as cranberries, peanuts, tobacco, ginger ale, cocoanuts, celery, cucumbers, starch, soap, kraut, etc., it is difficult to see any particular similarity of the articles that would justify a comparison. Take, for instance, the article of cranberries. The nature of this product seems entirely different from that of eggs, the risk in shipment cannot be the same, neither can bulk or value be near the same; yet all these matters are, according to the testimony of experts, to be considered in determining upon the classification.

One of the expert witnesses, when testifying, says that weight; space occupied; value; ease of handling; liability to accident or loss; value of the article in the event of accident or loss; frequency or infrequency of shipments; the necessity of providing cars of special construction; the necessity of special care of property, such as furnishing ice, stoves, etc.; the speed with which the carriage must be made; the ability to load so that the cars may be filled to their fullest capacity; the liability of certain classes of freight to injure other freight by contact or in accidents, such as acids; the dangerous character of some freights, such as matches and powder; the character of packages such as wine in glass which is much more

fragile than wine in wood ; are all conditions to be considered in determining upon the proper classification of articles, yet with reference to any or all of these matters there is little if any testimony offered upon which an intelligent comparison can be based.

The evidence shows that in the Western states, or upon the lines of railway which have adopted what is known as the Western classification, eggs in carload lots are placed in a different class from eggs in less than carloads, and this fact is urged by counsel with much earnestness as indicating by the action of the railways themselves the propriety of a distinction in rates as prayed for. In connection with this it is urged, and there is some evidence to sustain the position, that many railway men are of the opinion that there should be a carload rate less than the rate charged for less than carload shipments, although the record seems to show that they contemplate a change by raising the rate on small shipments. It is also urged that most of the railroads engaged in carrying eggs would prefer a carload rate and a less than carload rate, but that the Pennsylvania road has constantly opposed such a distinction, and thus far has been successful in hindering its adoption by the carriers.

The evidence in the case shows that the cost of gathering eggs to the large dealers, who usually ship in carloads, is about 20 cents per 100 lbs.; and it is earnestly contended that if the small dealer has his goods taken up and carried to market at the same rate as the large dealer, necessarily there is a discrimination against the large dealer to the extent of an expense of 20 cents per 100 lbs. in gathering eggs.

As to all these arguments the defendants answer that for a great number of years there has been growing up a custom which the railroad carriers seek to reach the main result of which is that they have developed the present system of classification in the interest and for the benefit of the public, but it is contended that it is far better for them to deal with the large dealers than with the small shippers, and that the main object of the present system is to bring about a uniformity of rates for small quantities of goods. It was granted that the present system was granted.

business in their own hands, and would then be in a situation to endeavor by throwing their business all to one road, to compel unfair concessions to them; and that it is for the interest of the railways and also for the interest of the public, so far as possible, that transportation transactions should be general, and directly with the smaller business men, rather than with a few parties who have monopolized the business, or would if further advantages were granted them, eventually succeed in doing so.

The facts found from the evidence are as follows :

(1.) The original complainant, C. H. Brownell, residing and doing business at Washington, C. H., Fayette County, Ohio, is a buyer of eggs and a shipper of the same in carload lots to the city of New York, and in making such shipments he incurs considerable expense in collecting from producers and small dealers such carloads, and in caring for and packing the same.

(2.) While said complainant is a shipper in carloads, rated at 20,000 lbs., and upwards, each, he is allowed by defendants to ship a quantity greatly less than 20,000 lbs. as a carload,—a quantity varying from 6,000 lbs. upwards, the same being iced by defendants and sealed to its destination as a carload at the regular rate of  $53\frac{1}{2}$  cents per 100 lbs., as second class freight, according to the Central or Official classification;—in other words, if complainant ships 10,000 lbs., in each of two cars, the 20,000 lbs. go through to destination, under seal and iced, in two cars for the same money as 20,000 in one car. Ice is not furnished the shipper in small lots, and the average amount necessary for this purpose is 6,000 lbs. to the car.

(3.) The total cost to said complainant of collecting his shipments of eggs—including packing in cases and loading into the car, and not including cost of cases, is about 20 cents per 100 lbs.

(4.) The testimony shows that shipments of eggs in carload lots are attended with less damage by breakage and otherwise, than are shipments in less than carload lots.

(5.) It appears that by prevailing custom and arrangements made, all producers of and dealers in eggs along the lines of defendants' roads are able to bring their product directly to the various depots and stations, put it into refrigerator cars and

have it carried to its destination, to wit: the larger cities, generally on the seaboard,—Baltimore, Philadelphia, New York, etc.,—at a uniform rate per 100 lbs.; whether in large or small amounts, one hundred pounds being the unit as to eggs, and certain other kinds of freight, under the Central or Official Classification adopted by defendants.

(6.) While this arrangement is open alike to all—producers and dealers, large and small—yet there are some producers who prefer to sell directly to the small dealers, others to the large dealers who ship in carloads; and again, some of the small dealers prefer to sell to large dealers instead of shipping for themselves to the eastern market. Various reasons incident to locality, distance to market, motives of personal convenience, motives arising from neighborhood acquaintance and mutual confidence between the parties concerned, and the many influences governing the transactions of daily life cause this diversity of practice.

(7.) The Union Line, the through freight department of the Pennsylvania Company, of which the Pittsburgh, Cincinnati & St. Louis Railway, defendant company, is a leased road, has provided such refrigerator cars for all producers, dealers and shippers (within the range of the country wherein complainants reside), who may desire to ship eggs from their several places of residence or business to eastern markets over the roads of defendants.

(8.) Said Union Line has a system or method of collecting farm and dairy products, including eggs, by means of “pick-up” cars running over said range of country and gathering the greater portion of such freight at Chicago where it is concentrated into carloads; and as a general rule, such freight arriving at Chicago in the morning goes out the following evening on through fast trains to its eastern destination. This system extends as far west as Dakota and Nebraska, and has various central points for collection or concentration,—Chicago being the principal point, and Columbus, O., another, at which latter point is concentrated a large portion of the egg product of the surrounding country, including Fayette County and Washington, C. H., complainant Brownell’s place of business. Agents of said Union Line are assigned to such central

points and they travel over the adjacent districts of country, and solicit consignments direct from shippers; and this system has been in use from ten to twenty years. The Central or Official classification of farm and dairy products, including eggs, is in use from the Mississippi river eastward and over a territory within which the complainant in this case resides; and west of said river a different classification as to many of said products, including eggs,—known as the “Western” classification—prevails.

(9.) The present cost of the refrigerator dairy product car, such as is used in carrying eggs, is about \$1,000. The weight of the car is about 42,000 pounds. It is equipped with self-couplers and air brakes. The old box car in which eggs were formerly carried weighed about 23,000 pounds and cost about \$450. The rate upon eggs Chicago to New York was as follows, at the periods named:

In 1865 \$1.55 per hundred pounds.

1869 1.25 per hundred pounds.

1874 1.10 per hundred pounds.

1876 .85 per hundred pounds.

1878 .70 per hundred pounds.

1887 and at the present time, 65 cents per hundred pounds.

Section 2 of the Act to regulate commerce, so far as it may be claimed to be applicable to the case under consideration, prohibits charging a greater compensation for any service rendered “than is charged any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions.”

It was specifically claimed by the complainants in the case of *Thurber v. New York Cent. & H.R.R.R.Co.* that carload rates upon certain articles, less in amount than the rate charged for smaller quantities of the same articles, were in violation of the second section of the Act. But the Commission held that “where the article moves in sufficient volume, and the demands of commerce are thereby better served, it is reasonable to give a carload classification and rate.” 2 Inters. Com. Rep. 742,

752, 3 I. C. C. Rep. 473, 501. The Commission then proceeded to discuss and decide the specific questions involved as to rates for the carload and less than carload lots upon particular articles complained of, and held that the disparity between the rates shown to exist was not justified by the circumstances; that the differences made were unreasonable, and therefore their reduction within reasonable bounds was ordered. The propositions which seem to have been established by the decision were, that carload rates, as to some articles under proper conditions and circumstances, were reasonable and not forbidden by the statute, and that the difference between carload and less than carload rates should only be in proportion to the extra cost, or in the line of equalization. In the Thurber Case the complaint was on account of a difference in rates between carload and less than carload rates. In this case the complaint is on account of an equality of rates.

The proposition of complainant in this case is, that carload rates being permitted in some cases, it is an unjust discrimination to extend the same rate on eggs to the smaller shipper as that given to the shipper by the carload. To maintain this proposition it would be necessary for the complainant to show that the different circumstances of the two kinds of service justify a different charge, and that in consequence of giving the small shipper the same rate as the carload shipper, an unjust discrimination has been brought about against the large shipper. The evidence shows that no carload rate has been made upon eggs, but that equal rates by the 100 pounds have been granted to large and small shippers of that article.

To give the complainant the relief he seeks, upon the theory of the complaint, it will be necessary to order a carload rate at the figure now prevailing, and to order an increase of the rate to the small shipper. This course would be necessary because the complainant does not attack the present rate of \$107.00 on eggs per carload of 20,000 lbs. from Washington Court House to New York as excessive in itself. His contention is that it is excessive as compared with carload rates given to other articles. But it does not appear from the evidence that there is such a similarity of circumstances and conditions attending the carriage of the article cited by complainant, and the article



in question, as to give a basis for fair comparison, and from which it may be determined that the difference in rates operates as an unjust discrimination.

A lower carload rate could only be required upon a showing that the circumstances and conditions of service to the large shipper were so dissimilar as to require, in the line of equal treatment, a less rate than is made for the small shipper. The evidence upon this point does not satisfy us that the Commission would be justified in making such an order in this case. Only a few points of difference have been established which might be deemed material to such an inquiry. They are the greater speed and saving of time in carload shipments from a single consignor to a single consignee, and a slightly lighter expense in the way of billing to one instead of several consignees. To counterbalance this, it appears that where carloads are sent they are iced by the carrier, while this is not done at all in the less than carload shipments. Undoubtedly something is gained in carload shipments in the receipts, hauling, delivery and unloading of the car; but, as we have seen, the evidence does not show that after due consideration of the differing conditions and circumstances surrounding the two shipments any unjust discrimination results from giving a common and equal rate. While the allegation is made that the rate is unreasonable and excessive, yet it is coupled with the proposition that it is excessive as compared with other carload rates, and the examination and trial has been conducted upon the theory that the grievance complained of is an unjust discrimination against the large shipper by reason of an equal rate to the small shipper.

While the complainant cites numerous articles, heretofore mentioned, as having a carload rate, and seeks to make a comparison between eggs and the articles named, and also cites the general concession of carload rates to agricultural products, there is a dearth of evidence to enlighten the Commission as to the proper method of comparison, if any can be made, between eggs and the articles named by complainant. It is apparent, even to one not an expert, that there is no general resemblance between the articles mentioned by the complainant and the article in question. We are, therefore,

driven to the conclusion that the complainant has failed to show by evidence any unjust discrimination against himself and other similar dealers in eggs by reason of the present rate.

If the relief asked by the complainant cannot be granted by ordering a lower carload classification and rate, a difference in rate between carload and other smaller shipments might be brought about by increasing the rate to the smaller shipper in less than carload lots. But the record shows that the complainant does not seek to raise the rate to the small shipper, although witnesses, who claimed common interest with the complainant, suggested that the less than carload rate might be increased; and there is some evidence which tends to show that railway freight managers, who were inclined to concede a carload rate, expected and wished that this should be accomplished by an increased rate to the small shipper. But the evidence fails to show that the rate to the small shipper is too low. In fact, the record as made by the complainant is against any such claim.

The table hereto attached shows the classification applied upon eggs packed in barrels or boxes in each of the various classifications now and formerly in use throughout the United States.

Statements showing classifications applied upon Eggs packed in barrels or boxes, in each of the various classifications now and formerly in use throughout the United States

(Rates in Cents per Hundred Pounds.)

Year	Name of Classification	From	To	L.C.L.		C.L.	
				Class	Rate	Class	Rate
1886	Joint Merchandise.....	Philadelphia.	Elmira.....	2	32	4	18
1893	Official No. 11.....	"	"	2	30	2	30
1886	Middle & Western States.	Buffalo ....	E. St. Louis.	2	50	4	26
1893	Official No. 11.....	"	"	2	47	2	47
1886	East Bound.....	Chicago .....	New York....	3	70	3	70
1888	Official No. 4*.....	"	"	2	65	3	50
1893	Official No. 11.....	"	"	2	65	2	65
1886	West Bound.....	New York....	Chicago.....	1	75	1	75
1888	Official No. 4*.....	"	"	2	65	3	50
1893	Official No. 11.....	"	"	2	65	2	65
1878	Western .....	Chicago .....	Kansas City.	2	70	4	30
1887	Joint Western.....	"	"	2	75	3	50
1893	Western .....	"	"	2	60	3	43
1876	So. Ry. & S.S. Ass'n.....	Louisville ....	Atlanta .....	2	125	2	125
1880	So. Ry. & S.S. Ass'n.....	"	"	3	89	3	89
1893	So. Ry. & S.S. Ass'n.....	"	"	2	92	2	92

\*From Aug. 15, 1888, to Feb. 17, 1889, inclusive.

From this it will appear that in the year 1886 and earlier, carload and less than carload rates were given, but that they were soon abandoned, and since about the year 1886 with a single exception for a short period noted in the table the Trunk Lines have carried at a fixed rate per 100 lbs. The same seems to be true of the roads embraced in the Southern System, while the custom prevailing in the Western System seems always to have been to make a difference between carload and less than carload rates.

In classification, dairy products and poultry have usually been classified with eggs. If one article embraced in a class is entitled to a carload rate, shippers of analogous articles embraced in the same class might claim the same treatment. Evidence, therefore, was introduced tending to show the effect of making a carload and less than carload rate upon such articles as butter and cheese. Witnesses representing the dairy interests were heard upon this question, and they united in declaring that the establishment of a carload rate upon dairy products would result in very serious injury to the dairy business as it is now conducted in the Western States. It is therefore urged with some degree of force that the interests, not alone of those who are shipping eggs, but of those who are shipping dairy products, should be considered.

The evidence tends to the conclusion that the method of conducting the butter and cheese business is of such a character that the extension of a uniform rate per 100 lbs. to the small dealers is of very great advantage to them, and that the establishment of a carload rate would work a serious injury to the small producers of butter and cheese.

The production of eggs is widely diffused among our population; indeed, it is perhaps safe to say that more persons are engaged in the production of eggs for sale than of any other commodity of commerce. In respect of diffuse production and method of shipment there is striking similarity between eggs and the more delicate variety of small fruits, like peaches and berries. In the nature of things, a producer of these commodities is seldom able to ship a carload at one time, though during a favorable season he will make frequent and often daily shipments to the market. So with eggs, the producer

must be largely engaged, indeed, who can ship a carload quantity. The common custom of the railroads is the same with fruit and berries as with eggs; they are gathered in small lots at various stations and carried direct to the general market, and the value of this transportation facility to producers and small dealers can hardly be over estimated. The egg is a delicate and perishable commodity. Though methods adopted for its preservation retard the decomposition to which it is subject, they do not prevent the article from taking on that musty and strong flavor so often noticed in "stored eggs." While not as perishable as the small fruits mentioned, yet, considering the delay which is necessary in the accumulation of sufficient lots for sale or sending to market, its inherent liability to early decay, and the fact that "fresh eggs" are commonly held to be an indispensable food article in every household, it must be deemed sufficiently perishable to be classed with articles of that character. In the Official Classification eggs, any quantity, are classed as low as berries in carloads, fruit in carloads, not otherwise specified, and butter and cheese, in any quantity; and they are given a lower class than poultry, game, peaches, or oysters, not in the shell. These commodities, though diverse in character, are all perishable food products and particularly subject to deterioration after short lapses of time and under climatic influences. Considered as a perishable article eggs cannot be deemed to have an unfavorable classification; they are classed lower than some, and no higher than any, of the articles above mentioned. That less than carload lots of eggs can be shipped at the carload rate is, in our judgment, a concession to the less than carload shipper which, under its already low classification and the other circumstances surrounding the egg traffic, does not work unjust discrimination to the shipper of eggs in carloads.

The unit of quantity that carriers have universally employed for the purpose of rate making is the hundred pounds. The purpose of a classification is to group the various articles of commerce into general classes upon which the rate per hundred pounds shall apply. Classification of carloads in a lower class than is given to the same article in a less quantity was at first merely incidental to the business of transportation, and the

practice has not yet become so general that a lower carload class must be given to every article which may be offered in carload quantities. The justice of the demand depends upon the facts in each case; it cannot be determined by an inflexible general rule. It is a sound rule for carriers to adapt their classifications to the laws of trade, that is, as before stated, if an article moves in sufficient volume *and the demands of commerce will be better served*, it is reasonable to give it a carload classification. *Thurber's Case supra*. The large dealers, who now control more than three-fourths of the business of gathering and shipping eggs to the large cities, cannot be said to suffer material damage from the competition of small shipments under the same rate to the same market. Beyond giving a practical monopoly to the large dealers, it does not appear that any other portion of the public would be benefited by a lower class for carloads of eggs. If the railroads were not willing to gather the small lots of eggs and carry them direct to a general market, there might be some ground for holding that the volume of egg traffic, the demands of trade, and the interests of local dealers and producers, are such that a lower carload classification is desirable; but the special facilities furnished local shippers for putting their eggs in large markets in as fresh state as possible are, in our view, of greater benefit to producers, local dealers, city dealers, and consumers, than any other method of gathering and shipping which has yet been devised for this or any other perishable food product; and such advantage to the general public should not be interfered with or its continuance in any way discouraged unless a more satisfactory method of reaching the markets can be established in its stead.

In the Thurber Case above cited, where the complaint was of too great difference between carload and less than carload rates, we held that "A difference in rates upon carloads and less than carloads of the same merchandise between the same points of carriage, so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, is unjust and violates the provisions and principles of the Act." In this case, where a lower carload rating is sought, we think the same general rule is applicable.

The business of the carload shippers is not diminishing, but it has increased, under equal rates, and in view of the fact that they now handle most of the traffic it is evident that less rates for carload quantities must result in giving them a practical monopoly, and that any difference in rates will be a difference "so wide as to destroy the competition between large and small dealers."

To avoid any misunderstanding it may be said here that the Commission is aware of and has in former utterances called attention to the manifest tendency towards the establishment of carload rates. Tariffs filed in this office show a constant tendency to include more and more articles in a carload classification. If, at some future time, the carriers engaged in carrying butter, eggs, poultry and similar articles, should agree upon and establish carload and less than carload rates for such articles, reasonable in themselves, and maintaining a true relation between the two rates, giving no undue advantage to one kind of shippers over another, the Commission would probably decline to interfere.

The Commission believes that the law to regulate commerce was intended to secure to persons needing transportation service the nearest possible approximation to equal treatment, and that where there exists in the cost or conditions of the service sufficient reason therefor, the carriers may rightfully establish and maintain carload and less than carload rates, but where the carriers themselves make one uniform rate per hundred pounds, if such act on the part of the carrier is warranted by the conditions, a nearer approach is made to perfect equality than could be made in any other way and the Commission should interpose no objection. But when the conditions of the service are so marked and distinct as to bring about an unjust discrimination or a preference by the maintenance of such uniform rate, then there would be a departure from the equality of treatment which seems to be one of the principal results sought for by the law.

But the question here presented has necessarily been considered upon the evidence as introduced in the case, and upon the evidence before us the complainant has failed to establish his right to the relief prayed for.

The fact seems to be that so far as the gathering of eggs is concerned there is competition between the large dealers and the railways engaged in gathering. The evidence shows that the cost to the complainant of gathering eggs for shipment is about twenty cents per 100 lbs. The nature of the preparation made by the railways for the similar service on their part warrants the conclusion that the cost of gathering to them is probably not less than that amount, and it seems to be a cost or charge incident to the nature of the business, and may not be avoided by persons engaging therein, and whether incurred by railways or large dealers, can make no material difference to the producer. The gathering of egg along the line of railways is clearly connected with and a part of the transportation service, and it does not appear that any benefit, but rather an injury would result to the small dealers and producers by the order asked for by the complainant and that it would have a tendency to concentrate the business in the hands of large operators. The evidence shows that at the present time 83 per cent. of the business is controlled by these large shippers, and it would seem that an order granted as prayed for by complainant would go far towards concentrating the whole business in their hands. The tendency of the times, deplored by all, is the concentration of the transportation business of the country in the hands of a few individuals who control large amounts of business. This interferes with competition, and works an injury to many who are almost as well equipped for the business as those who in the end succeed by a concentration of power in the hands of a few to rule out all below them. It is common testimony that large dealers have often, by throwing their business first upon one railway and then upon another, forced concessions which are secretly made; and being made to the few and not to the many, they are less easily detected, and work great injury to the general public.

It is, therefore, the order of the Commission that complainant's petition shall be dismissed.

KNAPP, *Commissioner*:

I agree with Commissioner McDill that the complaint in this case should be dismissed, but prefer to state in my own way the general reasons which lead me to that conclusion.



The fundamental issue involved, as I view it, is independent of the question whether the particular carload rate complained of is excessive, and presents a much broader and more important inquiry. Can a violation of the Act to regulate commerce, under any circumstances, be predicated upon the fact that an interstate carrier maintains the same rate per hundred pounds for the transportation of a given article, whether shipments are made by the carload or in smaller quantities? This question, I am convinced, should be answered in the negative. If the carload rate is itself reasonable, by whatever standard it may be measured or tested, no legal discrimination results, or can result, from fixing the same basis of compensation for the carriage of smaller shipments. Theoretically at least, the charges for public transportation should be proportioned in each case to the weight of the commodity carried, that being at once the most convenient and most equitable method of determining the relative value of the carrier's services to different shippers of the same article. The wholesale and retail principle has no just application to the business or duty of providing the facilities of public conveyance. It is at variance with the spirit and purpose of the law which aims to secure equality of treatment to every person. That purpose is not fully accomplished when one scale of charges is adopted for shipments of large volume and a higher rate imposed for smaller quantities, even though all large shippers pay the same and all small shippers are charged alike. The right of equal transportation is not perfectly secured unless the same *rate* is granted in every case whether the shipment be large or small.

It is quite true that in *Thurber v. New York Cent. & H. R. R. Co.*, 2 Inters. Com. Rep. 742, 3 I. C. C. Rep. 473, the Commission recognized the distinction somewhat commonly made by carriers between carload and less than carload rates, and, while condemning as too great the differences there complained of, virtually conceded the general right to maintain such a distinction. But the practice of granting the lower rate on carload shipments had grown up with the development of railroad commerce and antedated by many years the regulating Act of Congress. It was a common feature of tariff construction, and

there are substantial reasons arising out of the ordinary methods of transportation by which the policy can be defended. Moreover, it does not appear as a rule that any serious injustice results to the smaller shippers, or that the suitable distribution of commercial products is impeded, by the maintenance of carload and less than carload rates on the same commodity. Unless the disparity between the two rates is unreasonable, which is another question, the fact that such a distinction is made will not ordinarily prove of much practical importance. In a great measure the business of the country is adjusted to this method of rate making, and its continuance is not likely to be injurious to public or private interests. In administering this remedial statute it is obviously unwise to interfere with established usages, unless they plainly offend its provisions and in a substantial degree abridge the rights which it was designed to protect. To attempt the enforcement of absolute uniformity by condemning the prevalent custom of granting lower rates on carload shipments would, under present conditions, be both injudicious in effort and impracticable in execution; nor does the chief purpose of the Act require such a general departure from existing practices.

But it does not follow that the adoption of a uniform rule, by which the same measure of compensation is applied whether the shipment be large or small, can sustain a complaint of unjust discrimination against the carrier whose charges are thus regulated. There is a wide margin between refusing to condemn an established and prevalent custom, and compelling its literal observance in a particular instance. It is one thing to concede the right to make a carload and a less than carload rate, it is quite another thing to require it. The single rate is not unlawful because differing rates would ordinarily be permitted. Even if the distinction here considered was the general practice in all parts of the country, which is very far from being the case, I do not see how a uniform rate, though applied by but one carrier to a single commodity only, could operate as an illegal discrimination within the meaning and intent of the statute.

When it is conceded that a given carload rate can be criticised for no other reason than that the same rate is accepted

for smaller shipments, that carload rate, I contend, is reasonable both in fact and in law, and the circumstance that the lesser quantity is carried at the same rate per hundred pounds affords no just ground of complaint by the carload shipper. How can the law be violated if the rate is reasonable and all shippers are treated alike? Long continued custom and the methods of transportation in actual use may justify in most cases a lower rate for carload shipments than for smaller quantities, but when a carrier sees fit to apply the same rule for fixing its compensation whether it carries a train load or a ton, what right of the larger shipper is infringed, and upon what principle can the action of the carrier be condemned?

Under ordinary conditions, of course, the larger the shipment the greater the profit per hundred pounds to the carrier. The carload undoubtedly pays better in proportion to the weight transported than the smaller quantity, when the same rate is applied to both. More than this, the work of loading and unloading is mainly done by the carrier when merchandise is shipped in small quantities, while in the case of carload shipments the loading is usually done by the consignor and the unloading by the consignee. The carrier can afford to take the greater shipment for a smaller rate of compensation. This is partly because the large shipper, for his own convenience or advantage performs part of the service which it is the carrier's duty to perform, and partly because the greater tonnage can be hauled and delivered at proportionally less expense. But the pecuniary advantage of the carrier is by no means the controlling consideration in determining the just relation of rates. The general public right to equal transportation must be recognized, and that right may be seriously invaded if charges are graduated according to the volume of business. Some of the largest shippers not only do their own loading and unloading, but also provide their own cars, side tracks, warehouses and other facilities for the easy and economical delivery to the carrier of their immense shipments, and thus make their patronage peculiarly desirable. Much the same argument which justifies a reduced rate to carload shippers would justify a still lower rate when shipments are made, as frequently happens, by the train load. But no

reduction from carload rates in favor of train load shippers would be sanctioned by the Commission or permitted by the law making authority. Such a concession would concentrate the commerce of the country in the hands of a few great capitalists, and would be an obvious and intolerable encroachment upon the rights of the vast majority of shippers. If the system of lower rates for carload quantities had not been in vogue when government regulation was first undertaken, if the general practice prior to that time had been to charge in all cases by the hundred pounds, I apprehend that permission to establish a lower carload rate, on the ground that the railroads could afford to grant it, would have been unhesitatingly denied, and that a complaint of unjust discrimination, because the same rate was given to all, would have been summarily dismissed. The equitable basis of transportation charges is the weight of the shipment; the just *rate* of the carrier's compensation should not be affected, as between different shippers, by the volume of their business.

I assume that the carload rate under consideration is not shown to be unreasonable for carload shipments, and that conclusion appears to be required by the investigation made. So far as the complaint is based upon the theory that smaller shipments should be subjected to higher charges, and that seems to be the main contention, no case for relief is established, and on that theory the proceeding should be dismissed. Such a decision, however, should not preclude the Commission from entertaining another complaint against the rate in question, based on other grounds and measured by other standards.

*Commissioner MORRISON, dissenting:*

The complainant in this proceeding insists upon the right to a lower rate on the hundred pounds of eggs shipped in full carloads than is paid on the hundred pounds carried in small quantities from Washington Court House, Ohio, to New York City. Many roads now concede this right in territory west of Chicago.

The practice of carrying the great mass of products at lower rates when shipped in carloads than in less than carloads was when the Act to regulate commerce was passed and still is in

very general use, and the legality of this practice has been justified and upheld by this Commission under said Act. It has been so justified and upheld because, among other reasons, the shipper loads and the receiver or consignee unloads carload shipments, while the carrier loads and unloads articles shipped in small quantities. Carloads require but one billing and one delivery; less than carloads necessitate the making of many bills and as many separate deliveries. In receiving, transporting and delivering goods by the carload carriers are relieved from a considerable part of the labor and expense necessarily done and incurred by them when articles are shipped in small parcels or quantities. So long as such general practice prevails I see no good reason why eggs should be made an exception. The reasons upon which lower rates on goods in carloads are based are as applicable to eggs as they are to other articles, and the shippers of eggs in carloads should have the same equal treatment as shippers of other products who are accorded lower rates on carload shipments than are given to shippers of the same products in less than carloads.

GEORGE RICE V. THE ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY AND THE ST. LOUIS SOUTH-  
WESTERN RAILWAY COMPANY OF TEXAS.

GEORGE RICE V. THE BALTIMORE & OHIO SOUTH-  
WESTERN RAILROAD COMPANY AND THE  
COLUMBUS HOCKING VALLEY AND TOLEDO  
RAILWAY COMPANY.

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Complaints filed, November 5, 1891.—Answers filed, November 23, 1891, to  
January 2, 1892.—Heard and submitted at Washington, D. C., March 28,  
1893.—Decided, May 18, 1893.

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Some of the grievances alleged in the complaint were subsequently removed  
by defendants as a result of the Commission's order in other cases. The  
other charges were denied by the defendants in their verified answers,  
and that denial was fortified by the positive testimony of witnesses.  
The petitioner did not appear at the hearing, though duly notified there-  
of, and offered no proof in support of the information and belief upon  
which his allegations were made. Held, that as to these charges the  
complaint must be dismissed.

*Roger W. Cull, Esq.*, for St. Louis Southwestern R. Co. and  
St. Louis Southwestern R. Co. of Texas.

*E. W. Strong, Esq.*, for Baltimore & Ohio S. W. R. Co. and  
Columbus, Hocking Valley & Toledo R. Co.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Commissioner*:

The complaints in these cases are directed against different  
lines of railway carriers, but are otherwise substantially alike.  
They were investigated together and may be properly disposed  
of in one report.

The rates and practices alleged by the petitioner to be  
unlawful relate to the transportation of refined oil and other  
products of petroleum from Marietta, Ohio, to various points in  
other states reached by the defendant lines. He asserts that these  
rates and practices discriminate against him, as a shipper of  
these commodities in barrels, in favor of certain tank shippers  
which belong to or are affiliated with what is called the "Stand-  
ard Oil Trust." Three grounds of complaint are stated.

1. That in fixing the basis of transportation charges on petroleum products, the defendants allow an arbitrary deduction of 42 gallons from the shell capacity of a tank, while no corresponding allowance is made when these articles are shipped in barrels.

2. That such charges are based on an assumed weight of 6.3 pounds per gallon when shipments are made in tanks, while barrel shipments are carried on an estimated weight of 400 pounds per barrel, which is relatively unjust to the barrel shipper.

3. That certain favored shippers are permitted to stop their cars at stations between the points of shipment and destination and remove a portion of the contents therefrom, thereby in effect securing the lower carload rates on less than carload shipments; that such favored shippers are also permitted to ship their products at through rates, which are proportionately less than local rates, and then stop their cars at intermediate stations and remove a portion of the contents therefrom, thereby in effect securing through rates on shipments essentially local; and that these privileges are denied to the complainant.

The first two of these grievances undoubtedly existed at the time these complaints were filed, for the methods then used by the defendants and other carriers in estimating the weights of petroleum shipments were relatively unjust to barrel shippers. This subject was quite fully considered in a series of proceedings instituted by this complainant, which were decided by the Commission in April, 1892.

*Rice v. Cincinnati, Washington & Baltimore Railroad Co.* 3 Inters. Com. Rep. 841, 5 I. C. C. Rep. 193.

After that decision was rendered, the rail carriers generally which engage in the transportation of petroleum products, including these defendants, fixed the minimum tank carload at the shell capacity of the tank in each case, and abandoned the practice of making any deduction therefrom. They also raised the estimated weight of these commodities, when carried in tanks, to 6.4 pounds per gallon, and are now regulating their charges according to that basis. We do not find that the application of this rule for ascertaining the weight of oil



shipments in tanks, compared with the estimated weight of 400 pounds per barrel, when the same article is shipped in that form, operates to the prejudice of the barrel shipper. The rates per hundred pounds are the same whether carried in tanks or barrels; no charge is made for tanks, but barrels pay the same as their contents. In view of the facts found and conclusions reached in the cases above mentioned, we must regard the subsequent action of the carriers as a substantial compliance with the requirements then made by the Commission in the respects here referred to, and therefore find no occasion for further directions in these proceedings. The question of the free carriage of barrels is not presented by the complaints now under consideration, and is designedly left open for such determination as the facts and circumstances of particular cases may hereafter seem to require.

The third ground of complaint appears to be wholly unfounded. There is no evidence that "favored" shippers have secured carload rates on less than carload shipments, or through rates on local shipments, by being permitted to remove portions of the contents of cars at intermediate stations between the points of shipment and of destination. The verified answers of the defendants explicitly deny that any such discriminations have occurred, and that denial is fortified by the positive testimony of their witnesses. The petitioner did not appear at the hearing, though duly notified thereof, and has offered no proof in support of the information and belief upon which his allegations were made. As to these charges the complaint must be dismissed.

**THE TECUMSEH CELERY COMPANY V. THE CINCINNATI, JACKSON & MACKINAW RAILWAY COMPANY AND THE WABASH RAILROAD COMPANY.**

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Complaint filed February 1, 1892.—Answer of Cincinnati, Jackson & Mackinaw Railway Company filed February 23, 1892.—Depositions in behalf of complainant filed May 6, 1892.—Statement of facts filed by complainant May 16, 1892.—Hearing at Detroit, Michigan, May 2, 1893.—Decided June 15, 1893.

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1. When a carrier fails to answer a complaint filed under section 13 of the Act to regulate commerce, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require.
2. For that portion of its line over which the Western Classification is in force the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant and other vegetables enumerated in Class C of that Classification, rather than with berries, peaches, grapes, and other fruits specified in Class III. thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of any of said other vegetables named in Class C aforesaid; and mixed carloads of celery and cauliflower or other vegetables specified in said Class C of the Western Classification should be transported by the defendants from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of either of said vegetable articles, embraced in that class.

*W. C. Burridge* for complainant.

*Swayne, Swayne & Hayes* for Cincinnati, Jackson & Mackinaw Railway Company.

**REPORT AND OPINION OF THE COMMISSION.**

*VEAZEY, Commissioner:*

The petition in this case is as follows :

“I. That the complainant is a company incorporated under the laws of the State of Michigan, and has, since about the month of August, 1887, been engaged in growing vegetables near the town of Tecumseh in said State, and shipping the same over the railroads of the defendants and other carriers for sale in various markets.

“ II. That the defendants above-named are common carriers and under a common control, management, or arrangement for continuous carriage or shipment, are engaged in the transportation of property wholly by railroad between Tecumseh, in the State of Michigan, and Kansas City, in the State of Missouri, and as such common carriers are subject to the Act to regulate commerce.

“ III. That the rate of fifty-one cents per hundred pounds now charged by defendants to the complainant for the transportation of celery in carload lots of not less than twenty thousand pounds, released, from Tecumseh, Michigan, to Kansas City, Missouri, is unjust and unreasonable, in violation of the Act to regulate commerce.

“ IV. That defendants by charging more for the transportation of celery in carloads from Tecumseh, aforesaid, to Kansas City, aforesaid, than they charge for the transportation in carloads of cauliflower and other vegetables, similar to celery in bulk, weight, and value, unjustly discriminate against complainant and subject it to undue and unreasonable prejudice and disadvantage in violation of the Act to regulate commerce.

“ V. That defendants by refusing to transport celery and other vegetables, of similar bulk and value, together in what is known as mixed carload lots from Tecumseh, aforesaid, to Kansas City, aforesaid, at the higher carload rate and minimum carload weight specified for celery, and by insisting upon charging the carload rate on minimum carload weight of twenty thousand pounds of celery when only, for example, seventeen thousand pounds thereof is loaded in a car, and also insisting upon charging the less than carload rates upon, for example, three thousand pounds of cauliflower loaded in the same car, exact an unlawful and unjust charge for such mixed carloads, unjustly discriminate against complainant and subject it to undue and unreasonable prejudice and disadvantage, in violation of the Act to Regulate Commerce.

“ By way of specification under the foregoing allegations the complainant avers and sets forth that the transportation of celery in carloads over defendants' lines from Tecumseh, aforesaid, to Kansas City, aforesaid, is conducted under two

classifications and a combination rate, namely, Official Classification, Class IV, nineteen cents per hundred pounds, Tecumseh to St. Louis or Hannibal, distance about four hundred and forty miles; and Western Classification, Class III, thirty-two cents per hundred pounds, St. Louis or Hannibal to Kansas City. That shipments are made released; and the form of release in use is as per copy thereof attached hereto, and marked Exhibit A. That the commodity is loaded in refrigerator cars employed by defendant in the transportation of dressed beef and similar traffic from Kansas City to eastern points, and complainant's celery furnishes return loads for these cars, which they would not have if the traffic were carried in other cars or shipped to points in other directions. That the cost of refrigeration is not included in the rate charged, but on the contrary, the ice used for refrigerating purposes, when complainant's celery is transported in such cars, is furnished by complainant, and the cost thereof is a charge upon the transportation in addition to the rate which is complained of as unlawful. That the rate on celery between the points mentioned was twenty-five cents per hundred pounds in 1887, and complainant's business was established and built up during the time it continued in force. That in or about the month of September, 1889, the rate on celery from Mississippi River points to Kansas City, was raised by a change in the Western Classification, and that commodity was taken out of Class C, which embraces cauliflower and many other vegetables, and placed in Class III of said Western Classification. That the market price of celery had declined before the increase in rate and has since that time further declined. That celery comes in competition in the Kansas City market with celery shipped by various methods from several localities, and it also competes for sale in that and other markets of the world with other vegetables, such as cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and the finer kinds of vegetables generally, which in value equal or exceed the value of celery. That Class III of said Western Classification, in which celery is now placed, also includes berries, peaches, grapes, and green fruits, with which celery cannot successfully compete for sale to the average consumer. That the sale of

the complainant's celery is injuriously affected by the defendants' excessive rate to Kansas City as compared with their lower charges on such competitive vegetable articles. That to be reasonable the rate on celery in carloads should not exceed the rate charged on other vegetables with which it competes for sale and which are embraced in Class C of said Western Classification. That complainant while complaining of the whole rate of fifty-one cents per hundred pounds as unreasonable, desires to call particular attention to the fact that it is so mainly because of the greatly disproportionate charge for the haul to Kansas City from points on the Mississippi River. That under the Official Classification mixed carloads of commodities differently classed may be shipped at the carload rate and minimum weight per carload specified for the article belonging to the highest class, but this is not allowed by the Western Classification. Complainant makes no claim for any reparation to which he may be entitled by reason of injuries sustained under the unlawful rate aforesaid.

"The complainant prays that the defendants may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendants to cease and desist from said violations of the Act to regulate commerce, and for such other and further order as the Commission may deem necessary in the premises."

The defendant, the Cincinnati, Jackson & Mackinaw Railway admits that its road and that of its co-defendant, the Wabash Railroad Company, forms a line of railroad from Tecumseh, Michigan, *via* Britton, Michigan, to Kansas City, Missouri, for the transportation of freight, and also admits that the rates are as set out in the complaint. The answer of this defendant also avers that the rates from Tecumseh to East St. Louis, of which no complaint is made, and which alone are pro-ratable, are uniform, reasonable and just; that the rates charged from East St. Louis to Kansas City, which form the basis for the complaint are promulgated and exacted by the different railroads comprising the Western Freight Association, over which the Cincinnati, Jackson & Mackinaw Railway has no control, and for which it should not be held responsible; that the claim of petitioner, that the celery is loaded in

refrigerator cars employed by the defendants in the transportation of dressed beef and similar traffic from Kansas City to eastern points, and that complainant's celery furnishes return loads for these cars is not applicable, so far as this defendant is interested, as this defendant has been compelled to haul the empty cars to Tecumseh for loading, from its junction with the Wabash Railroad.

Practically no defense has been made to the complaint in this case. The complaint expressly disclaims any attack upon the rates charged to the Mississippi River, and the Cincinnati, Jackson & Mackinaw Railway Company, which delivers the traffic to the Wabash at Britton, only six miles from Tecumseh, is a necessary party merely on account of being one of the connecting carriers in the through line over which the traffic must pass. The burden of defending the rates complained of was therefore upon the Wabash Railroad Company, which has failed to answer or take any part in the proceeding.

Rule XI of the Rules of Practice before the Commission, provides in the second paragraph that "in case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require." On April 19, 1892, complainant took the testimony of P. W. A. Fitzsimmons, C. M. Woodward, and E. J. Hollister by deposition, having theretofore duly mailed reasonable notice thereof to each of the defendant corporations. Neither of the defendants participated in the taking of such depositions, nor was either of them represented at the hearing before the Commission in Detroit, on May 2, 1893, although due and timely notice of such hearing was given. At the hearing in Detroit, the complainant was represented by counsel and its manager, Mr. E. J. Hollister, the depositions above referred to were read and put in evidence, and Mr. Hollister was also sworn and examined.

This traffic from Tecumseh for Kansas City, Missouri, taken in Wabash cars to East St. Louis, Illinois, under the Official Classification and joint through rate of defendant carriers, and from East St. Louis the carriage is continued in the same cars to Kansas City under the Western Classificati

and the tariff rate of the Wabash road, but the carriage is continuous and there is but one through shipment and one through charge from Tecumseh to the point of destination. The carload rate from Tecumseh, Michigan, to East St. Louis, Illinois, on celery, cauliflower, asparagus, string beans, green peas, lettuce, oyster plant, egg plant, etc., in either straight or mixed carloads is the same, 19 cents per 100 lbs. From East St. Louis to Kansas City, the above articles, *except celery*, take the Class C rate of 15 cents per 100 lbs. in either straight or mixed carloads, while celery, in straight carloads only, is charged the Class III. rate of 32 cents per 100 lbs. The through rate from Tecumseh to Kansas City on celery in carloads is 51 cents per 100 lbs.; and that on the other articles mentioned, in either straight or mixed carloads, is 34 cents per 100 lbs.; and the difference is wholly caused by the higher classification of celery in the Western Classification, which is applied by the Wabash to that portion of its line extending from East St. Louis to Kansas City. It is matter of general knowledge that during recent years, and especially since the change of classification mentioned in the complaint, celery has come into much more common use. Its production has greatly increased and its market value has declined. It certainly is no more a table luxury than some of the vegetables which have a lower class in the Western Classification. As varied or qualified by the foregoing, the facts stated in the petition are found to be true, and we hold that the complainant is entitled to the relief claimed.

For that portion of its line over which the Western Classification is in force the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that Classification, rather than with berries, peaches, grapes, and other fruits specified in Class III thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of any of said other vegetables named in Class C aforesaid; and mixed carloads of celery and cauliflower or other vegetables specified in said Class C of the Western Classification should be transported by defendants from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of either of said vegetable articles embraced in that class. Order will be entered accordingly.





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- Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co. *et al.*, 663.

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The Northern Pacific Railroad Co. is not exempt under its charter from the authority to regulate rates conferred on the Commission by the Act to regulate commerce.

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Board of Trade of Chattanooga *v.* East Tennessee, Virginia & Georgia  
 Railway Co. *et al.*, 546.

Gerke Brewing Co. *v.* Louisville & Nashville Railroad Co. *et al.*, 596.

See LONG AND SHORT HAUL PROVISION; UNJUST DISCRIMINATION.

## CLASS FREIGHTS.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co. *et al.*, 478.

Board of Trade of Chattanooga *v.* East Tennessee, Virginia & Georgia  
 Railway Co. *et al.*, 546.

## CLASSIFICATION.

1. UNREASONABLE RATES CAUSED BY UNJUST CLASSIFICATION. MIXED CARLOADS. Murphy, Wasey & Co. *v.* Wabash Railroad Co. *et al.*, 122.

Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co.,  
*et al.*, 663.

2. EXCEPTIONS TO CLASSIFICATION ON COMMODITIES CARRIED TO TERMINAL POINTS. Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co. *et al.*, 478.

## 3. CAR-LOAD AND LESS THAN CAR-LOAD LOTS.

When an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give a lower classification for car-loads than that which is applied to less than car-load quantities, but the difference in such classification should not be so wide as to be destructive to competition between large and small dealers. Thurber *v.* N. Y. C. & Hudson River R. R. Co., 8 I. C. C. Rep., 473, cited and re-affirmed. The justice of the claim for a lower rating on car-load lots can only be determined by the facts in each case.

Brownell *v.* Columbus & Cincinnati Midland Railroad Co. *et al.*, 638.

4. PURPOSE OF CLASSIFICATION IN RATE MAKING.—*Ib.*

## 5. BASIS OF COMPARISON. ANALOGOUS ARTICLES.

Unreasonable or unjust classification of a commodity is not shown by evidence of lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value or general character. The proper method of comparison is the classification accorded by carriers to analogous articles.—*Ib.*

**6. CELERY. MIXED CAR-LOADS.**

For that portion of its line over which the Western Classification is in force the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that classification, rather than with berries, peaches, grapes, and other fruits specified in Class III. thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per car-load than they charge for carrying a car-load quantity of any of said other vegetables named in Class C aforesaid; and mixed car-loads of celery and cauliflower or other vegetables specified in Class C of the Western Classification should be transported by defendants from Tecumseh to Kansas City at no higher rate per car-load than they charge for carrying a car-load quantity of either of said vegetable articles embraced in that class.

*Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co. et al.*, 663.

**CLASS RATES.**

*Merchants Union of Spokane Falls v. Union Pacific Railroad Co. et al.* 478.

**COAL.**

*Macloon v. Chicago & Northwestern Railway Co.*, 84.

*In re Transportation of Coal by the Louisville & Nashville Railroad Co.*, 466.

**COMBINATION RATES.**

See **RATES**.

**COMMERCIAL CONSIDERATIONS.**

*Raworth v. Northern Pacific Railroad Co. et al.*, 234.

*Eau Claire Board of Trade v. Chicago, Milwaukee & St. Paul Railway Co. et al.*, 264.

*Anthony Salt Co. v. St. Louis & San Francisco Railway Co.*, 299.

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

*Potter Manufacturing Co. v. Chicago & Grand Trunk Railway Co. et al.*, 514.

*Loud v. South Carolina Railway Co. et al.*, 529.

*Chamber of Commerce of Minneapolis v. Great Northern Railway Co. et al.*, 571.

**COMMODITIES.**

See **TRAFFIC**.

**COMMODITY RATES.**

See **RATES**, 10; **UNJUST DISCRIMINATION**, 12; **LONG AND SHORT HAUL PROVISION**, 3.

**COMMON CONTROL, MANAGEMENT OR ARRANGEMENT.****1. ARRANGEMENT FOR THROUGH TRANSPORTATION.**

Where an arrangement exists between connecting carriers for through transportation, the minimum through rates prescribed by the Com-



mission after investigation must prevail, irrespective of the method of division between the carriers.

*Boston Fruit & Produce Exchange v. New York & New England Railroad Co. et al.* Re Application of Pennsylvania Railroad Co., 1.

2. COMMON ARRANGEMENT. WATER AND RAIL LINES.

The defendants, the Clyde Steamship Co., The New York & Texas Steamship Co., and the Florida Central & Peninsular Railroad Co., are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto.

*Railroad Commission of Florida v. Savannah, Florida & Western Railway Co. et al.*, 13, 136.

3. CONTINUOUS SHIPMENTS.

Carriers should not treat shipments of traffic intended to be continuous between interstate points as consisting of two kinds of service, independent of each other, the one to or from a so-called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate. *Re Tariffs of Atlanta & West Point Railroad Co. et al.*, 3 I. C. C. Rep., 46. *Hamilton & Brown v. Chattanooga, Rome & Columbus Railway Co. et al.*, 4 I. C. C. Rep., 686, Cited and affirmed. *Perry v. Florida Central & Peninsular Railroad Co. et al.*, 97.

*Rising et al. v. Savannah, Florida & Western Railway Co. et al.*, 120.

4. CONSTRUCTION.

The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section of the Act to regulate commerce was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt successively by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al.*, 596.

## COMPETITION.

1. CARRIERS, SUBJECT TO THE ACT.

*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al.*, 596.

2. CARRIERS, NOT SUBJECT TO THE ACT.

*Railroad Commission of Georgia v. Clyde Steamship Co., et al.*, 324.

*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al.*, 596.

3. LEGITIMATE AND ILLEGITIMATE.—*Id.*

4. EFFECT OF "LOG DRIVE" ON COMPETING SHINGLE MILLS.

*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.

5. **FOREIGN RAILROAD.**  
*Raworth v. Northern Pacific Railroad Co., et al.*, 234.  
*Railroad Commission of Georgia v. Clyde Steamship Co., et al.*, 324.  
*Merchants Union of Spokane Falls v. Northern Pacific Railroad Co. et al.*, 478.
6. **MARKET.**  
*Raworth v. Northern Pacific Railroad Co., et al.*, 234.  
*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.  
*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.  
*Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al.*, 596.
7. **RAILROAD.**  
*Perry v. Florida Central & Peninsular Railroad Co. et al.*, 97.  
*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.  
*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.  
*Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al.*, 596.
8. **STATE RAILROAD.**  
*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.
9. **WATER.**  
*Perry v. Florida Central & Peninsular Railroad Co., et al.*, 97.  
*Rice v. Cincinnati, Washington & Baltimore Railroad Co. et al.*, 193.  
*Rice v. Louisville & Nashville Railroad Co.*, 193.  
*Raworth v. Northern Pacific Railroad Co. et al.*, 234.  
*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.  
*In re Transportation of Coal by Louisville & Nashville R. R. Co.*, 466.  
*Merchants Union of Spokane Falls v. Northern Pacific Railroad Co. et al.*, 478.  
*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.  
*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.  
 See **LONG AND SHORT HAUL PROVISION.** **PREFERENCE OR ADVANTAGE**, 10.  
**REASONABLE RATES**, 12.

#### COMPETITIVE POINTS.

- Perry v. Florida Central & Peninsular Railroad Co. et al.*, 97.  
*Rising et al. v. Savannah, Florida & Western Railway Co. et al.*, 120.  
*Toledo Produce Exchange v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.  
*Kemble v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.  
*Rice v. Cincinnati, Washington & Baltimore Railroad Co. et al.*, 193.  
*Rice v. Louisville & Nashville Railroad Co.*, 193.  
*Raworth v. Northern Pacific Railroad Co. et al.*, 234.  
*Eau Claire Board of Trade v. Chicago, Milwaukee & St. Paul Railway Co. et al.*, 264.  
*Anthony Salt Co. v. St. Louis & San Francisco Railway Co.*, 299.  
*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.  
*In re Transportation of Coal by Louisville & Nashville R. R. Co.*, 466.  
*Merchants Union of Spokane Falls v. Northern Pacific Railroad Co., et al.*, 478.  
*Chamber of Commerce of Minneapolis v. Great Northern Railway Co. et al.*, 571.  
*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.  
*Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al.*, 596.  
*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.

## COMPLAINT.

1. BY STATE RAILROAD COMMISSION.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.
2. EFFECT UPON COMPLAINT OF ACTION BY THE COMPLAINING STATE COMMISSION IN REGARD TO THE RATES WITHIN THE STATE.—*Ib.*
3. SHOULD BE DIRECTED AGAINST THE AGGREGATE CHARGE.  
 Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.
4. COMMISSION MERCHANTS AS COMPLAINTS.  
 James & Abbot *v.* Canadian Pacific Railway Co. *et al.*, 612.
5. ABSENCE OF DIRECT DAMAGE.—*Ib.*

See PRACTICE; BURDEN OF PROOF.

## CONCESSION OF RELIEF.

## REDUCTION OF RATES PENDING THE CONTROVERSY TO THE POINT OF REASONABLENESS.

Loud *v.* South Carolina Railway Co. *et al.*, 529.

See REASONABLE RATES, 28.

## CONNECTING LINES.

1. CONTINUOUS CARRIAGE OVER.  
 Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co. *et al.* Re Application of Pennsylvania Railroad Co., 1.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.  
 Perry *v.* Florida Central & Peninsular Railroad Co. *et al.*, 97.  
 Rising *et al.* *v.* Savannah, Florida & Western Railway Co. *et al.*, 120.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.
2. WATER AND RAIL.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co., *et al.*, 324.  
 Board of Trade of Chattanooga *v.* East Tennessee, Virginia & Georgia Railway Co. *et al.*, 546.  
 See TARIFFS, 12; COMMON CONTROL, MANAGEMENT OR ARRANGEMENT THROUGH RATES; CONTINUOUS CARRIAGE OF FREIGHTS; INTERSTATE COMMERCE 1.

## CONSTRUCTION.

See ACT TO REGULATE COMMERCE.

## CONTINUOUS CARRIAGE OF FREIGHTS.

## BASING POINT SYSTEM.

Carriers should not treat shipments of traffic intended to be carried between interstate points as consisting of two kinds of rates, independent of each other, the one to or from a so-called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate.

Perry *v.* Florida Central & Peninsular Railroad Co. *et al.*, 97.  
 Rising *et al.* *v.* Savannah, Florida & Western Railway Co. *et al.*, 120.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

See COMMON CONTROL, MANAGEMENT OR ARRANGEMENT.

## DAMAGE.

**Macloon v. Chicago & Northwestern Railway Co., 84.**  
**Loud v. South Carolina Railway Co. et al., 529.**

See REPARATION.

## DEFINITIONS.

1. "JOINT FREIGHT TARIFF."  
**Lehmann, Higginson & Co. v. Texas & Pacific Railway Co. et al., 44.**
2. "CIRCUMSTANCES AND CONDITIONS."  
*In re* Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.  
**Railroad Commission of Georgia v. Clyde Steamship Co. et al., 324.**  
**Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al., 596.**
3. "COMMON CONTROL, MANAGEMENT OR ARRANGEMENT FOR CONTINUOUS CARRIAGE OR SHIPMENT."  
**Boston Fruit & Produce Exchange v. New York & New England Railroad Co. et al. Re Application of Pennsylvania Railroad Co., 1.**  
**Railroad Commission of Florida v. Savannah, Florida & Western Railway Co. et al., 13, 136.**  
**Perry v. Florida Central & Peninsular Railroad Co. et al., 97.**  
**Rising et al. v. Savannah, Florida & Western Railway Co. et al., 120.**  
**Railroad Commission of Georgia v. Clyde Steamship Co. et al., 324.**  
**Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al., 546.**  
**Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al., 596.**
4. "LIKE KIND OF TRAFFIC."  
**Railroad Commission of Georgia v. Clyde Steamship Co. et al., 324.**

## DEMURRAGE CHARGES.

**Macloon v. Chicago & Northwestern Railway Co., 84.**

## DIFFERENTIAL RATES.

See RELATIVE RATES, 1, 2, 3; THROUGH RATES, 2.

## DISCRIMINATION.

See UNJUST DISCRIMINATION.

## DISTANCE.

See LONG AND SHORT HAUL PROVISION; PREFERENCE OR ADVANTAGE;  
 REASONABLE RATES; RELATIVE RATES.

## DIVISION OF THROUGH RATES.

See COMMON CONTROL, MANAGEMENT OR ARRANGEMENT; THROUGH RATES

## EGGS.

**Brownell v. Columbus & Cincinnati Midland Railroad Co. et al., 688.**

## EQUIPMENT.

See UNJUST DISCRIMINATION, 7.

## ESTOPPEL.

See PRACTICE, 9.

## EVIDENCE.

## 1. UPON THE QUESTION OF REPARATION.

Where claim for reparation is made in a complaint of unreasonable rates, the burden of proof is on complainant to show the facts connected with the claim, and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant, in such cases it will decline to award reparation.

*Perry v. Florida Central & Peninsular Railroad Co. et al.*, 97.

## 2. WHERE RATES ARE ALLEGED UNREASONABLE.

Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found, is not sufficient to establish the unreasonableness of the charges complained of. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that the charges assailed are unreasonable and ought to be reduced.

*Lincoln Creamery v. Union Pacific Railway Co.*, 156.

## 3. EFFORT TO RESCIND AGREEMENT TO ADMIT EVIDENCE TAKEN IN OTHER CASES.

Defendants offered to waive objection to depositions taken without notice on behalf of complainant, the Toledo Produce Exchange, if all the evidence taken in certain proceedings which involved questions similar to those herein should be treated and considered as evidence in this case, and the offer was accepted, but complainants agents afterwards sought to rescind the agreement, although complainant had leave to put in whatever additional evidence it desired; *Held*, That the case should be considered according to the original agreement.

*Toledo Produce Exchange v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.

*Kemble v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.

## 4. ADDITIONAL ALLOWED BY DECISIONS.

*Toledo Produce Exchange v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.

*Kemble v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.

*Rice v. Cincinnati, Washington & Baltimore Railroad Co. et al.*, 193.

*Rice v. Louisville & Nashville Railroad Co.*, 193.

## 5. RULE IN PROCEEDINGS UNDER FOURTH SECTION..

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

6. REDUCTION OF RATES.—A reduction of rates is not *per se* evidence that the former rates were unreasonable.

*Loud v. South Carolina Railway Co. et al.*, 529.

## 7. WHAT IS MATERIAL.

When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges, including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.

*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.

See BURDEN OF PROOF; PRACTICE, 15, 17, 21, 22, 24, 25.

## FACILITIES.

*Boston Fruit & Produce Exchange v. New York & New England Railroad Co., et al.* Re Application of Pennsylvania Railroad Co., 1.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.

Perry *v.* Florida Central & Peninsular Railroad Co. *et al.*, 97.

Rising *et al.* *v.* Savannah, Florida & Western Railway Co. *et al.*, 120.

Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co. *et al.*, 478.

Loud *v.* South Carolina Railway Co. *et al.*, 529.

Brownell *v.* Columbus & Cincinnati Midland Railroad Co. *et al.*, 638.

See SPECIAL TRAIN SERVICE.

#### FAVOR IN TRANSPORTATION.

*In re* Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.

Harvey *v.* Louisville & Nashville Railroad Co., 153.

#### FIFTH SECTION OF THE ACT.

See ACT TO REGULATE COMMERCE; POOLING.

#### FIRST SECTION OF THE ACT.

See ACT TO REGULATE COMMERCE; COMMON CONTROL, MANAGEMENT OR ARRANGEMENT; CONNECTING LINES; REASONABLE RATES; RELATIVE RATES; REPARATION; THROUGH RATES; THROUGH ROUTES AND THROUGH RATES.

#### FLOUR.

Hezel Milling Co. *v.* St. Louis, Alton & Terre Haute Railroad Co. *et al.*, 57.

Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.

#### FOURTH SECTION OF THE ACT.

See ACT TO REGULATE COMMERCE; LONG AND SHORT HAUL PROVISION.

#### FREE CARTAGE OF FREIGHTS.

Hezel Milling Co. *v.* St. Louis, Alton & Terre Haute Railroad Co. *et al.*, 57.

See UNJUST DISCRIMINATION, 2.

#### FREE PASSES AND FREE TRANSPORTATION.

*In the Matter of* the Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.

Harvey *v.* Louisville & Nashville Railroad Co., 153.

#### FREIGHTS.

See TRAFFIC; CARLOADS AND LESS THAN CARLOADS.

#### FURNITURE.

Murphy, Wasey & Co. *v.* Wabash Railroad Co. *et al.*, 122.

Potter Manufacturing Co. *v.* Chicago & Grand Trunk Railway Co. *et al.*, 514.

## GRAIN.

- Buchanan *v.* Northern Pacific Railroad Co., 7.  
 Hezel Milling Co. *v.* St. Louis, Alton & Terre Haute Railroad Co. *et al.*, 57.  
 Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.

## GROUP RATES.

See BLANKET RATES.

## INTERSTATE COMMERCE.

1. **TRANSPORTATION BY STATE RAILROAD AS PART OF THROUGH LINE.**  
 Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co. *et al.* Re-application of Pennsylvania Railroad Co., 1.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.  
 Perry *v.* Florida Central & Peninsular Railroad Co. *et al.*, 97.  
 Rising *et al.* *v.* Savannah, Florida & Western Railway Co. *et al.*, 120.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.  
 Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.
2. **FREE CARRIAGE OF PASSENGERS BETWEEN POINTS IN DIFFERENT STATES.**  
*In re* Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.  
 Harvey *v.* Louisville & Nashville Railroad Co., 153.
3. **REGULATION OF TRANSPORTATION BY CARRIER CLAIMING EXEMPTION UNDER ITS CHARTER.**  
 Raworth *v.* Northern Pacific Railroad Company, *et al.*, 234.  
 Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co. *et al.*, 478.
4. **SUBJECT TO THE ACT.**  
 The phrase "common control, management or arrangement for continuous carriage or shipment" in the first section of the Act to regulate commerce, was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt successfully by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.  
 The jurisdiction of the Commission in respect to the carriage of and rates upon wheat and flour between Minnesota points discussed with reference to the ultimate destination of the traffic to interstate points.  
 Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.

## INTERSTATE COMMERCE COMMISSION.

1. **DIVISION OF THROUGH RATES BETWEEN CONNECTING CARRIERS.**  
 Under the pleadings and evidence the Commission could only prescribe a single rate for the service as an entirety, to be reasonably and fairly decided among the several carriers by themselves.  
 Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co. *et al.* Re Application of Pennsylvania Railroad Co., 1.



2. DUTY TO INVESTIGATE COMPLAINTS FORWARDED BY STATE RAILROAD COMMISSION.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.
3. ISSUANCE OF ORDER PENDING INVESTIGATION.  
 In the Matter of the Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.
4. DUTY TO PASS UPON CLAIMS FOR REPARATION.  
 Macloon *v.* Chicago & Northwestern Railway Co., 84.
5. POWERS AND DUTIES.  
 Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.  
 Kemble *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.
6. POWERS UNDER THE FOURTH SECTION.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.
7. RAILROAD CHARTER  
 The Northern Pacific Railroad Co. is not exempt under its charter from the authority to regulate rates conferred on the Commission by the Act to regulate commerce.  
 Raworth *v.* Northern Pacific Railroad Co. *et al.*, 234.  
 The Northern Pacific Railroad Co., notwithstanding certain provisions in its charter, is subject, like all other interstate carriers, to the authority conferred by Congress in the Act to regulate commerce.  
 Citing and affirming Raworth *v.* Northern Pacific Railroad Co.  
 Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co. *et al.*, 478.  
 See PRACTICE; JURISDICTION; COMMON CONTROL, MANAGEMENT OR ARRANGEMENT; INTERSTATE COMMERCE.

### JOINT FREIGHT TARIFFS.

- Lehmann, Higginson & Co. *v.* Texas & Pacific Railway Co. *et al.*, 44.  
 See TARIFFS.

### JURISDICTION.

- Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co. *et al.* Re Application of Pennsylvania Railroad Co., 1.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.  
 Raworth *v.* Northern Pacific Railroad Co. *et al.*, 234.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.  
 Merchants Union of Spokane Falls *v.* Northern Pacific Railway Co. *et al.*, 478.  
 Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.  
 See PRACTICE; COMMON CONTROL, MANAGEMENT OR ARRANGEMENT; INTERSTATE COMMERCE.

### LESS THAN CAR-LOADS.

- See CAR-LOADS AND LESS THAN CAR-LOADS.

LIGHTERAGE CHARGES.

IN NEW YORK HARBOR.

Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.

Kemble *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.

LIKE KIND OF TRAFFIC.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

LOCALITIES.

See LOCATION.

LOCAL RATES.

Perry *v.* Florida Central & Peninsular Railroad Co. *et al.*, 97.

Rising *et al.* *v.* Savannah, Florida & Western Railway Co. *et al.*, 120.

Rice *v.* Louisville & Nashville Railroad Co., 193.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

Gerke Brewing Co. *v.* Louisville & Nashville Railroad Co. *et al.*, 596.

LOCATION.

ADVANTAGES AND DISADVANTAGES.

Perry *v.* Florida Central & Peninsular Railroad Co. *et al.*, 97.

Rising *et al.* *v.* Savannah, Florida & Western Railway Co. *et al.*, 120.

Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.

Kemble *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.

Rice *v.* Louisville & Nashville Railroad Co., 193.

Raworth *v.* Northern Pacific Railroad Co. *et al.*, 234.

Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul Railway Co. *et al.*, 264.

Anthony Salt Co. *v.* St. Louis & San Francisco Railway Co. *et al.*, 299.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

*In re* Transportation of Coal by Louisville & Nashville Railroad Co., 466.

Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co. *et al.*, 478.

Potter Manufacturing Co. *v.* Chicago & Grand Trunk R'y Co. *et al.*, 514.

Board of Trade of Chattanooga *v.* East Tennessee, Virginia & Georgia Railway Co. *et al.*, 546.

Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.

Gerke Brewing Co. *v.* Louisville & Nashville Railroad Co. *et al.*, 596.

James & Abbot *v.* Canadian Pacific Railway Co. *et al.*, 612.

LONG AND SHORT HAUL PROVISION.

1. TRANSPORTATION OF BERRIES.

Rates on interstate shipments from points on the initial carriers line were shown to be greater for the shorter distance from Lawtey than for the longer distance over the same line in the same direction from Gainesville, and defendants were ordered to bring their rates from Lawtey and other points in that territory in conformity with the provisions of the fourth section of the Act to regulate commerce. The fact that the initial carrier's lines joins its connecting line at both Callahan and Gainesville, and that traffic from Lawtey, an intermediate

station, may be routed through Gainesville. the longer distance point, does not authorize defendants to charge the higher rate from Lawtey, when the traffic from that point and from Gainesville is in fact routed through Callahan.

*Perry v. Florida Central & Peninsular Railroad Co. et al.*, 97.

*Rising et al. v. Savannah, Florida & Western Railway Co. et al.*, 120.

2. IMPROPER DIFFERENCES BETWEEN LOWER LONG AND GREATER SHORT HAUL RATES. TRANSPORTATION OF PETROLEUM.

Charges of the Louisville & Nashville Railroad for the transportation of petroleum to several points on its lines are not only apparently unreasonable in themselves, but the existing disparity in rates to neighboring localities creates presumption of extortion in exacting the higher charges; moreover, as between tank and barrel shipments of petroleum, this adjustment of rates operates to the general advantage of the former mode of conveyance. Water competition to various points on its lines may furnish justification for rates to intermediate inland points somewhat higher than the railroad must accept to participate in business to the more remote locality favored with water carriage, but when charges for the shorter distance on these lines are three times those for the longer, the disparity is absurd and inexcusable. The lower figure must be unremunerative, or the higher must be extortionate. This defendant ordered to revise and correct its charges on petroleum to many interior and local points on its lines, and make such reductions and modifications therein as will remove the gross disproportions and inequalities now found to exist.

*Rice v. Louisville & Nashville Railroad Co.*, 193.

3. IMPROPER DIFFERENCES BETWEEN LOWER LONG AND GREATER SHORT HAUL RATES. CLASS AND COMMODITY RATES.

Class rates in effect upon the defendant lines and the lower commodity rates to their Pacific terminals examined and discussed: *Held*, That the only justification for a through rate less than an intermediate rate on the same article is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt there is no ground upon which the lower through charge can be excused. No article should be carried to terminal points on commodity rates, which, if the class rates were imposed would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article.

*Merchants Union of Spokane Falls v. Northern Pacific Railroad Co. et al.*, 478.

4. When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered.

*Board of Trade of Chattanooga v. The East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

5. When rates, from any cause, are made greater for shorter than for longer distances, the difference between such rates must in no instance be unreasonable.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co., et al.*, 596.

6. CONSTRUCTION.

The second, third and fourth sections of the Act to regulate commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases

brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country and methods of trade and transportation, considered and criticised.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

7. CONSTRUCTION. FORMER DECISION PARTIALLY OVERRULED.

The fourth section of the Act to regulate commerce construed, and the principles laid down *In re Petition of Louisville & Nashville Railroad Co.*, 1 I. C. C. Rep., 31, re-affirmed, except the ruling therein whereby carriers were permitted to judge for themselves in the first instance of what constitutes "rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

8. CIRCUMSTANCES AND CONDITIONS; WATER COMPETITION; RAILROAD COMPETITION; MARKET COMPETITION; ADVANTAGE OF LOCATION; RIGHTS AND DUTIES OF CARRIERS.

The case against the Louisville & Nashville Railroad Co. is retained for further evidence and argument on the question whether water competition at various points justifies a departure from the general requirement of the fourth section, and for such further investigation of its charges to intermediate and non-competitive points, and direction in relation thereto, as may appear to be required.

Rice *v.* Louisville & Nashville Railroad Co., 193.

There is no competition by rail over the Canadian Pacific Railway or by water around Cape Horn, that justifies a departure from the "long and short haul" rule of the statute in the transportation of refined sugar from San Francisco to Fargo, and through Fargo to St. Paul.

Raworth *v.* Northern Pacific Railroad Co. *et al.*, 234.

The "long and short haul rule" of the statute was intended to maintain and promote, and not to destroy or neutralize natural and commercial advantages resulting from *location*, and competition at St. Paul with sugar from the east refined in New York, although necessitating the prevailing low rates to St. Paul on sugar from the west refined at San Francisco, does not justify the greater charge on the latter to Fargo than to St. Paul.

Raworth *v.* Northern Pacific Railroad Co. *et al.*, 234.

The competition of carriers subject to the Act to regulate commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves, in the first instance, whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

The competition of markets on different lines for the sale of commodities at a given point, served by both lines, does not create circumstances and conditions which the carriers can take into account in determining for themselves, in the first instance, whether they are justified under the fourth section, in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers cannot create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls, on the ground that the lesser long haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines. *Ib.*

The carrier has the right to judge in the first instance whether it is justified in making the *greater charge for the shorter distance* under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulation under the Act to regulate commerce. In other cases, under the fourth section, the circumstances and conditions are not presumptively dissimilar and carriers must not charge *less for the longer distance*, except upon the order of this Commission. *Ib.*

The rule expressed by the fourth section, that distance shall ordinarily limit the adjustment of rates, is not rendered inoperative by the existence at one point of converging lines subject to the Act, for the law applies to each of these lines, and neither can put in rates to that point which are lower than shorter distance charges on its line until, upon a showing of special considerations, grounded in justice, to its patrons and itself, it obtains permission from the regulating authority so to do. This principle applies both to lines between the same points, and to lines reaching the same destination from different points of consignment.

Gerke Brewing Co. v. Louisville & Nashville Railroad Co. *et al.*, 596.

9. CARRIERS NOT SUBJECT TO THE ACT. COMPETITION.

Competition with carriers, not subject to the statute, is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the Act, depends upon compliance with the law by each of the competitors, and the special circumstances and primarily indefinite conditions in each particular case.

Railroad Commission of Georgia v. Clyde Steamship Co., 5 I. C. C. Rep. 324, cited and affirmed. *Ib.*

Transportation by rail from eastern points to the "Pacific Coast Terminals," Portland, Tacoma and Seattle, is affected by the competition of controlling force and in respect to traffic important in amount, of water carriers reaching the same terminals, but such competition does not affect like transportation from said points to the city of Spokane, Washington; *Held*, therefore, that defendants are justified, by reason of such dissimilarity in circumstances and conditions, in maintaining higher rates on shipments of like property from said points for the shorter distance to Spokane, than for the longer distance to said Pacific Terminals. The competitive position and attitude of the Canadian Pacific Railway, a foreign carrier, considered in connection with existing water competition, but the separate effect of competition by the Canadian route not found or determined.

Merchants Union of Spokane Falls v. Northern Pacific Railroad Co. *et al.*, 478.

10. ANSWERS TO COMPLAINTS.

Carriers alleging justification of a departure from the "long and short haul" rule of the statute, must, in their answers to complaints, clearly advise complainants of the facts and circumstances relied on as constituting such justification.

Raworth v. Northern Pacific Railroad Co. *et al.*, 234.

11. ANSWERS. BURDEN OF PROOF. PROVISIO CLAUSE. APPLICATION OF CARRIERS FOR RELIEF. POWER OF THE COMMISSION.

When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar: but, upon an application for relief, under the fourth section

proviso, the carrier is not limited by such a rule of evidence, and may present to the Commission, every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief under that proviso when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers, require that an exception should be made.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

12. DECISION. ALTERNATIVE ORDER.

Complaints in cases No. 324 and No. 325, dismissed. In cases Nos. 314, 315, 316, 317 and 326, defendants ordered to cease and desist from charging more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified. Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

13. CARRIER REQUIRED TO OBSERVE FOURTH SECTION WHILE ADJUSTING RATES SO AS TO REMOVE UNDUE PREFERENCE.

Anthony Salt Co. *v.* St. Louis & San Francisco Railway Co. *et al.*, 299.

LUMBER.

Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul Railway Co. *et al.*, 264.

James & Abbot *v.* Canadian Pacific Railway Co. *et al.*, 612.

MARKET PRODUCE.

Delaware State Grange *v.* New York, Philadelphia & Norfolk Railroad Co. *et al.*, 161.

Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co. *et al.*, 663.

MELONS.

Loud *v.* South Carolina Railway Co. *et al.*, 529.

MERCANTILE SOCIETY.

See PRACTICE, 9.

MILEAGE RATES.

Chamber of Commerce of Minneapolis *v.* Great Northern Railway *et al.*, 571.

James & Abbot *v.* Canadian Pacific Railway Co. *et al.*, 612.

MIXED CARLOADS.

See CARLOADS AND LESS THAN CARLOADS, 3.

ORANGES.

Railroad Commission of Florida *v.* Savannah, Florida & Western way Co. *et al.*, 13, 136.

PARTIES.

Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Co. *et al.*, 166.

Kemble *v.* Lake Shore & Michigan Southern Railway Co. *et al.*,  
Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul R.  
Co. *et al.*, 264.

Chamber of Commerce of Minneapolis *v.* Great Northern Railway *et al.*, 571.

See PRACTICE, 5, 8, 10, 18, 20.

## PASSENGERS.

## CARRIAGE FREE OR AT REDUCED RATES.

In the Matter of the Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.

Harvey v. Louisville & Nashville Railroad Co., 153.

See UNJUST DISCRIMINATION, 4.

## PASSES.

See UNJUST DISCRIMINATION, 4.

## PEACHES.

Boston Fruit & Produce Exchange v. New York & New England Railroad Company *et al.* Re Application of Pennsylvania Railroad Company, 1.

Delaware State Grange v. New York, Philadelphia & Norfolk Railroad Co. *et al.*, 161.

## PERISHABLE FREIGHTS.

Boston Fruit & Produce Co. v. New York & New England Railroad Co. Re Application of Pennsylvania Railroad Co., 1.

Railroad Commission of Florida v. Savannah, Florida & Western Railway Co. *et al.*, 13, 136.

Perry v. Florida Central & Peninsular Railroad Co. *et al.*, 97.

Rising *et al.* v. Savannah, Florida & Western Railway Co. *et al.*, 120.

Delaware State Grange v. New York, Philadelphia & Norfolk Railroad Co. *et al.*, 161.

Loud v. South Carolina Railway Co. *et al.*, 529.

Brownell v. Columbus & Cincinnati Midland Railroad Co. *et al.*, 638.

Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co. *et al.*, 663.

## PETROLEUM AND ITS PRODUCTS.

Rice v. Cincinnati, Washington & Baltimore Railroad Co. *et al.*, 193.

Rice v. Louisville & Nashville Railroad Co., 193.

Independent Refiners' Association v. Western New York & Pennsylvania Railroad Co. *et al.*, 415.

Parkhurst & Co. v. Pennsylvania Railroad Co. *et al.*, 635.

Nicolai v. Pennsylvania Railroad Co. *et al.*, 635.

Rice v. St. Louis Southwestern Railway Co. *et al.*, 660.

## PIPE LINES.

Independent Refiners' Association v. Western New York & Pennsylvania Railroad Co. *et al.*, 415.

See POOLING.

## PLEADINGS.

See INTERSTATE COMMERCE COMMISSION, 1, 2. See PRACTICE, 4, 9, 15, 16, 20, 23.



## POOLING.

## CONSTRUCTION.

An agreement for the pooling of traffic between a carrier by rail, subject to the Act to regulate commerce, and a carrier by pipe line, does not fall within the description of contracts prohibited by section 5 of that Act.

Independent Refiners' Association *v.* Western New York & Pennsylvania Railroad Co. *et al.*, 415.

## PRACTICE.

## 1. REHEARING. APPLICATION FILED SUBSEQUENT TO DECISION DENIED.

The Commission having prescribed a maximum rate on peaches over connecting lines, some of the defendants construed the decision to justify them in insisting upon a division of the freight charge upon a mileage basis, and one of the other defendants applied for a rehearing. *Held*, that under the pleadings and evidence the Commission could only prescribe a single rate for the service as an entirety, to be reasonably and fairly divided among the several carriers by themselves, and the motion for rehearing was overruled.

Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co. *et al.* Re Application of Pennsylvania Railroad Co., 1.

## 2. Minor inaccuracies, not amounting to gross and radical error, are quite insufficient to impeach the substantial correctness of findings based on numerous and diverse considerations, or to require the alteration of rulings to which they relate.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 136.

## 3. REHEARING. APPLICATION FILED SUBSEQUENT TO DECISION DENIED.

Delaware State Grange, etc. *v.* New York, Philadelphia & Norfolk Railroad Co. *et al.*, 161.

Parkhurst *v.* Pennsylvania Railroad Co. *et al.*, 635.

Nicolai *v.* Pennsylvania Railroad Co. *et al.*, 635.

## 4. INVESTIGATIONS. COMPLAINT OF STATE RAILROAD COMMISSION. JURISDICTION.

The Act to regulate commerce, makes it the duty of this Commission "to investigate any complaint forwarded by the Railroad Commissioner or Railroad Commission of any State or Territory, at the request of such Commissioner or Commission." The complaint in this case was brought by, and in the name of the Railroad Commission of Florida, but the real parties in interest are large classes of growers, buyers and shippers, in the State of Florida. Since the complaint was filed, the nominal complainant has ceased to exist. *Held*, That the repeal of the law creating the Railroad Commission of Florida could not operate as a withdrawal or dismissal of the complaint, that Commission having been only an instrument for the transmission of the complaint to this Commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the Act to regulate commerce, and of the rules of courts of law in analogous cases. *Held further*, That under the provision of the Act to regulate commerce, authorizing this Commission to "institute an inquiry on its own motion, in the same manner, and to the same effect, as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 135-136.

5. The Georgia Railroad Commission, complainant herein, is directed by a statute of the State of Georgia, to bring complaint before this Commission whenever, after failure to obtain a satisfactory adjustment of rates, it finds through rates charged into Georgia to be excessive, unreasonable or discriminating, and by section thirteen of the Act to regulate commerce, this Commission is directed to investigate any complaint forwarded by the Railroad Commission of any state or territory. It is immaterial whether the complainant be the State Railroad Commission itself, or the parties on whose behalf it requests the investigation to be made. The Georgia Railroad Commission is a proper complainant in these proceedings.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

6. ORDER *pendente lite* AS TO MATTER FULLY INVESTIGATED.

When an investigation by the Commission to inquire into the business management of a common carrier has been fully concluded as to some matters, and not concluded as to others, an order may be made *pendente lite*, as to the former, and the cause retained for further consideration and order as to the latter.

In the Matter of the Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.

7. MEMORANDUM. DECISION. BASED ON REPORT AND OPINION IN SIMILAR CASE.

Rising *et al.* *v.* Savannah, Florida & Western Railway Co. *et al.*, 120.

8. DECISION. APPLICATION WHERE CARRIER, NOT PARTIES, SERVE SOME OF THE COMPETING LOCALITIES.

A railroad cannot be said to discriminate against a town which it does not reach, and in whose carrying trade it does not participate; therefore, no case is made out against the carriers which were made parties at the request of the original defendant, because none of them have lines extending to Eau Claire. Preference, prejudice and other like terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. But these parties having defended and endeavored to justify the differential found excessive, while not technically subject to an order for its correction, have no more right to render it ineffectual than to openly disregard a direction clearly within the scope of the Commission's authority. The intervening defendant, the Omaha road, though serving the complaining town, need not, for reasons stated, be included in the order directing the reduced rate, but the case will be held open, as against that company, for such direction as may hereafter be required.

Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul Railway Co. *et al.*, 264.

9. ESTOPPEL BY RECORD.

The Commission is a special tribunal whose duties, though largely administrative, are sometimes semi-judicial, but it is not a court empowered to render judgments and enter decrees. The rule of estoppel by record, which is at all times technical in character and applies to the record of courts and proceedings before federal officials whose acts are final, is not applicable to the complaint of Kemble, who had appeared before the Commission in a representative capacity, as a member of a committee of a complaining mercantile society, in proceedings heretofore dismissed, which involved questions similar to those presented in the case now under consideration and brought by him as an individual.

Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.

Kemble *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.

## 10. ORDER TO SHOW CAUSE.

Defendants and other carriers, not parties, ordered to show cause why order charging adjustment of relative rates from the basis of arbitrary differentials to that of percentage should not issue.—*Ib.*

## 11. APPLICATION OF RULINGS.

Rulings based on special facts and local conditions are not to be regarded as formulated precepts for general observance.

*Rice v. Cincinnati, Washington & Baltimore Railroad Co. et al.*, 193.

*Rice v. Louisville & Nashville Railroad Co.*, 193.

12. CASES RETAINED FOR FURTHER EVIDENCE AND INVESTIGATION, AND AMENDMENT OF PLEADINGS ALLOWED.—*Ib.*

## 13. CITATION OF AUTHORITIES.

English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country and methods of trade and transportation, considered and criticised.

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

## 14. DUTY OF CARRIERS TO APPLY FOR RELIEF IN CERTAIN CASES.

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

*Board of Trade of Chattanooga v. East Tennessee Virginia & Georgia Railway Co. et al.*, 546.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al.*, 596.

## 15. ANSWERS. BURDEN OF PROOF. APPLICATION FOR RELIEF UNDER PROVISORIAL CLAUSE OF FOURTH SECTION. POWER OF THE COMMISSION.

When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleadings, and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso, the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief, under that proviso, when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers require that an exception should be made.

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

## 16. ANSWERS TO COMPLAINTS UNDER THE FOURTH SECTION.

Carriers alleging justification of a departure from the "long and short haul" rule of the statute, must in their answers to complaints clearly advise complainants of the facts and circumstances relied on as constituting such justification.

*Raworth v. Northern Pacific Railroad Co. et al.*, 234.

## 17. QUESTION OF FACT.

The question as to correct weights and shipments, as between carrier and shipper, is one of fact to be determined in a manner just to both parties, and as to which the *ex parte* action of either cannot conclude the other.

*Potter Manufacturing Co. v. Chicago & Grand Trunk R'y Co. et al.*, 514.

## 18. RECEIVER APPOINTED SUBSEQUENT TO COMPLAINT.

The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation.

*Railroad Commission of Georgia v. Clyde Steamship Co. et al.*, 324.

## 19. RECEIVER. REPARATION.

The question, whether property of a carrier in the hands of a receiver appointed after the matters complained of before this Commission are alleged to have occurred, is subject to an order of reparation issued by this Commission, is one to be presented to and disposed of by the courts on proceedings therein for the enforcement of such order.

*Loud v. South Carolina Railway Co. et al.*, 529.

## 20. COMPLAINT. PARTIES. AGGREGATE CHARGES.

When a local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through line are necessary parties.

*Chamber of Commerce of Minneapolis v. Great Northern Railway Co. et al.*, 571.

## 21. BURDEN OF PROOF.

When claim for reparation is made on a complaint of unreasonable rates the burden of proof is on complainant to show the facts connected with the claim, and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant, in such cases it will decline to award reparation.

*Perry v. Florida Central & Peninsular Railroad Co. et al.*, 97.

## 22. When water competition is alleged to justify rates in any case under the statute the carrier must affirmatively show by proof which does more than create a presumption, and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the point in question.

*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.

A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. Citing *Logan v. Chicago & Northwestern Railroad Co.*, 2 I. C. C. Rep., 604.—*Ib.*

When on complaint of a car-load shipper, unjust discrimination is alleged to result from equal rates on car-load and less than car-load quantities of the same commodity, the burden of proof is upon the complainant.

*Brownell v. Columbus & Cincinnati Midland Railroad Co., et al.*, 638.

## 23. COMPLAINT. ABSENCE OF DIRECT DAMAGE TO COMPLAINANT.

The statute provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant," and defendants are therefore not entitled to a dismissal of the complaint on the ground that the petitioners being merely commission merchants, can sustain no direct or material damage under the rates in question.

*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.

## 24. FAILURE TO APPEAR. BURDEN OF PROOF.

Some of the grievances alleged in the complaint were subsequently removed by defendants as a result of the Commission's order in other cases. The other charges were denied by defendants in their verified answers, and that denial was fortified by the positive testimony of witnesses. The petitioner did not appear at the hearing, though duly notified thereof, and offered no proof in support of the information and belief upon which his allegations were made. *Held*, that as to these charges the complaint must be dismissed.

*Rice v. St. Louis Southwestern Railway Co. et al.*, 660.

When a carrier fails to answer a complaint filed under Section 13 of the Act to regulate commerce, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require.

*Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co. et al.*, 663.

## PREFERENCE OR ADVANTAGE.

### 1. IN FURNISHING CARS.

*Buchanan v. Northern Pacific Railroad Co.*, 7.

### 2. BETWEEN LOCALITIES. ADVANTAGE AND DISADVANTAGE OF LOCATION. COMMERCIAL CONSIDERATIONS.

*Lehmann, Higginson & Co. v. Texas & Pacific Railway Co. et al.*, 44.

*Toledo Produce Exchange v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.

*Kemble v. Lake Shore & Michigan Southern Railway Co. et al.*, 166.

*Merchants Union of Spokane Falls v. Northern Pacific Railroad Co. et al.*, 478.

*Chattanooga Board of Trade v. East Tennessee, Virginia & Georgia Railway Co. et al.*, 546.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co., et al.*, 596.

### 3. COMMERCIAL CONDITIONS. ADVANTAGES OF LOCATION.

That rates should be fixed in inverse proportion to the natural advantages of competing towns with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and the exaction of charges unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute.

*Eau Claire Board of Trade v. Chicago, Milwaukee & St. Paul Railway Co. et al.*, 264.

On complaint of a relatively reasonable rate on lumber from Eau Claire to various points on the Missouri river as compared with rates to the same points from La Crosse, Winona, and various other lumber shipping points: *Held*, that the case must mainly be determined by comparing the rate in question with the rates from neighboring towns, similar in size, situation and volume of competing traffic, and at approximately the same distance from common markets; that the rate complained of subjects Eau Claire to undue prejudice and disadvantage, and is unlawful; and that such rate should not exceed the rate from La Crosse and Winona by more than two cents per hundred pounds, when, as at the time complaint was filed, the rate from those points is not over 11 cents per hundred, nor more than two and one-half cents per hundred pounds above the present rate of 16 cents per hundred from La Crosse and Winona.—*Id.*

A railroad cannot be said to discriminate against a town which it does not reach and in whose carrying trade it does not participate, therefore, no case is made out against the carriers, which were made parties at the request of the original defendant, because none of them have lines extending to Eau Claire. Preference, prejudice and other like terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. But these parties having defended and endeavored to justify the differential found excessive, while not technically subject to an order for its correction, have no more right to render it ineffectual than to openly

disregard a direction clearly within the scope of the Commission's authority. The intervening defendant, the Omaha road, though serving the complaining town, need not for reasons stated, be included in the order directing the reduced rate, but the case will be held open as against that company for such direction as may hereafter be required.—*Id.*

On complaints of relatively unreasonable and discriminating rates on salt from Kansas fields to various points, as compared with rates to the same points from the salt fields of Michigan, *Held*, that any advantage which inure to Michigan salt manufacturers from rates to points in Iowa, Illinois, Missouri and Nebraska, are advantages arising from natural situation, and that the low rate to Missouri river points is influenced by conditions which are beyond the defendant's control and existed before Kansas salt was discovered. *Held, further*, that rates on salt to points south and southwest of Hutchinson, Kansas, and St. Louis, Missouri, do constitute undue preference in favor of Michigan, as against Kansas salt, and that they should be re-adjusted by the Santa Fe Company, so that, while observing the law as to the long and short haul, the advantages of distance belonging to Kansas salt fields shall be given to them in any territory supplied by its lines which lies as near or nearer to Hutchinson than St. Louis.

Anthony Salt Co. v. St. Louis & San Francisco Railway Co. 299.

A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys.

Chamber of Commerce of Minneapolis v. Great Northern Railway Co., *et al.*, 571.

A milling town possessing great natural, acquired and improved advantages for the carrying on of that industry, and favorably situate in point of distance to a large grain producing region, is entitled to the benefits arising from its location, and carriers of grain to that point and to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy.—*Id.*

Rates on wheat from points in North and South Dakota to Minneapolis as compared with the rates charged over considerably greater distances from the same points to Duluth and adjacent Lake Superior ports, subject Minneapolis millers to undue and unreasonable prejudice and disadvantage. Defendants ordered to adjust their rates on wheat from said points to Minneapolis and Duluth upon the basis of distance over nearest practicable routes.—*Id.*

#### 4. MANUFACTURING INDUSTRIES. RAW MATERIAL AND FINISHED PRODUCT. NATURAL ADVANTAGES OF LOCATION.

Manufacturing industries should not be deprived, through a carrier's adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product. James & Abbot v. Canadian Pacific Railway Co., *et al.*, 612.

#### 5. PRINCIPLES WHICH AFFECT THE QUESTION.

Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found, is not sufficient to establish the unreasonableness of the charges complained of. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of



traffic, similar in character and volume, it must affirmatively appear that the charges assailed are unreasonable and ought to be reduced.

Lincoln Creamery *v.* Union Pacific Railway Co., 156.

Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of unlawful discrimination.

Rice *v.* Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.

Rice *v.* Louisville & Nashville Railroad Co., 193.

The doctrine that transportation charged should be proportioned to the distances between different points, *where those distances are greatly dissimilar*, has never been advocated by the railroads or recommended by the Commission. While distance is an ever-present element in the problem of rates, and not unfrequently a controlling consideration, the general practice of rate-making is opposed to the principle of exact proportion, and there is no opportunity for its application under present conditions. Where all the distances brought into comparison are considerable, and the differences between them relatively small, there should be substantial similarity in the respective rates unless other modifying circumstances justify disparity.

Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul Railway Co. *et al.*, 264.

Continuance of a system of unjust rates cannot be required or excused on the ground that parties have made investments and entered into the business affected thereby, on the faith of assurances from carriers of their maintenance, although a change might work injury to the parties whom such rates had unduly favored.

Potter Manufacturing Co. *v.* Chicago & Grand Trunk Railway Co. *et al.*, 514.

An advantage, resulting from just rates coupled with the enterprise and outlay necessary to utilize them, is legitimate, and carriers should not undertake to deprive a shipper of this advantage by a change of such rates.—*Ib.*

#### 6. TANK AND BARREL SHIPMENTS OF PETROLEUM.

In assuming for transportation purposes that a barrel of refined petroleum oil weighs 400 pounds and that a gallon of that commodity weighs 6.3 pounds when shipped in tanks, defendants use constructive or hypothetical weights, so much out of proportion, to actual weights, that positive and measureable preference is constantly granted to the shipper by the tank method; and, so far as that practice enables the tank-shipper to secure the carriage of more pounds of freight for the same money than the shipper in barrels, it subjects the latter to unlawful prejudice.

When actual weights cannot be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of conveyance.

Rice *v.* Cincinnati, Washington & Baltimore Railroad Co. *et al.*, 193.

Rice *v.* Louisville & Nashville Railroad Co. 193.

#### 7. CONSTRUCTION.

The second, third and fourth sections of the Act to regulate commerce, compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country and methods of trade and transportation, considered and criticised.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.



**8. FACILITIES FOR SHIPMENT AND TRANSPORTATION TO SPOKANE AND PACIFIC COAST TERMINALS.**

In the matter of car-load and mixed car-load rates, minimum weight of shipments entitled to car-load rates, and in all other respects, defendants are required to provide for and allow the same privileges, facilities and advantages on shipments to Spokane as are provided or allowed on like shipments to Portland or other Pacific coast terminals. *Merchants' Union of Spokane Falls v. Northern Pacific Railroad Co. et al.*, 478.

**9. BLANKET CLASS RATES APPLYING TO SPOKANE AND OTHER POINTS HELD RELATIVELY UNREASONABLE.—*Ib.***

**10. WATER COMPETITION.**

When water competition is alleged to justify rates in any case under the statute the carrier must affirmatively show by proof which does more than create a presumption, and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the point in question.

*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.

**11. IN RATES ON DIFFERENT BRANCHES OR DIVISIONS.**

A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. Citing *Logan v. Chicago & Northwestern Railroad Co.*, 2, I. C. C. Rep., 604.

*James & Abbot v. Canadian Pacific Railway Co. et al.*, 612.

**12. MATERIAL EVIDENCE. DIVISIONS OF RATES BETWEEN CONNECTING ROADS.**

When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges, including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.—*Ib.*

**13. EFFECT UPON SHINGLE RATES OF "LOG DRIVE" DOWN RIVERS TO COMPETING MILLS. WATER COMPETITION.**

The drive of shingle logs down rivers which flow past the place of cut in Maine to a seaport in Canada where shingle mills are located, and from which the product may go by sea to market ports, affects shingle traffic from competing mills located along these rivers at a place in Canada and a place in Maine, but operates with less force at the latter point. The rail rate from the Canadian mill to market being fixed with especial reference to the effect of the log drive to and water competition for shingle traffic from the seaport, the rate from the Maine mill should be made upon the same basis.—*Ib.*

**14. RATES ON SHINGLES FROM COMPETING MILLS.**

Defendants ordered to restore the relation of rates on shingles to Boston, which they established after the filing of complaint herein, but soon after discontinued, to wit, a rate from Fort Fairfield in Maine, of not exceeding 6½ cents above the rate in force from Fredericton in Canada. Complainant's claim for reparation denied.—*Ib.*

**15. CELERY AND OTHER VEGETABLES.**

*Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co., et al.*, 663.

**PREJUDICE OR DISADVANTAGE.**

**DEMURRAGE CHARGES.**

Defendant's railroad connects at Janesville, Wisconsin, with the Chicago, Milwaukee & St. Paul Railway. Complainant is a merchant doing business at that point, and having coal yards on the line of the latter road, but receiving shipments from points on the line of the defendant

road, and his financial responsibility is not questioned in this proceeding. Carriers operating in that section of the country are members of a car service association, which has established a rule requiring the payment of demurrage charges when cars are retained by shippers more than forty-eight hours after receiving notice that such cars are in position to unload, and the rule is set forth by the carriers in their bills of lading. Upon all the facts in this case, *Held*, that the action of defendant in refusing, after payment of freight and offer of customary switching charges, to switching two car-loads of coal to the connecting line for delivery at the coal yard of the complainant on such line unless he promised in advance to pay any demurrage charges that might be made, regardless of whether they were just or legally enforceable, was unreasonable, notwithstanding complainant had previously refused to pay demurrage charges on other cars switched to his siding, which he had failed to fully unload within the time prescribed by the rule, and defendant by retaining the coal in its possession and demanding such promise from complainant as a condition precedent to the performance of its duty as a carrier, subjected the complainant to unlawful prejudice and disadvantage. *Held further*, that complainant is entitled to reparation for injuries sustained in consequence of such refusal and neglect of defendant, but, the proof as to the extent of his damages being insufficient, that the case be held open for the present without order, and that upon notice of adjustment by the parties of the question of reparation, the petition be dismissed.

*Macloon v. Chicago & Northwestern Railway Co.*, 84.

See PREFERENCE OR ADVANTAGE.

## PROSECUTION FOR WILLFUL VIOLATION.

See TARIFFS.

## PUBLIC INTEREST.

Power of concentrated business interests to force concessions in transportation rates which operate to the disadvantage of the general public discussed.

*Brownell v. Columbus & Cincinnati Midland Railroad Co., et al.*, 638.

See UNJUST DISCRIMINATION; LONG AND SHORT HAUL PROVISION; PREFERENCE OR ADVANTAGE; REASONABLE RATES; RELATIVE RATES.

## RATES.

### 1. BARLEY.

*Buchanan v. Northern Pacific Railroad Co.*, 7.

### 2. BEER.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co., et al.*, 596.

### 3. BERRIES.

*Perry v. Florida Central & Peninsular Railroad Co., et al.*, 97.

*Rising, et al. v. Savannah, Florida & Western Railway Co., et al.*, 120.

### 4. BLANKET.

*Rice v. Cincinnati, Washington & Baltimore Railroad Co., et al.*, 193.

*Rice v. Louisville & Nashville Railroad Co.*, 193.

*Merchants Union of Spokane Falls v. Northern Pacific Railroad Co., et al.*, 478.

5. BUTTER.  
Lincoln Creamery *v.* Union Pacific Railway Co., 156.
6. CELERY.  
Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co.,  
*et al.*, 663.
7. CLASS FREIGHT.  
Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway  
Co., *et al.*, 166.  
Kemble *v.* Lake Shore & Michigan Southern Railway Co., *et al.*, 166.  
Railroad Commission of Georgia *v.* Clyde Steamship Co., *et al.*, 324.  
Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co., *et*  
*al.*, 478.
8. COAL.  
Macloon *v.* Chicago & Northwestern Railway Co., 84.  
*In re* Transportation of Coal by the Louisville & Nashville Railroad  
Co., 466.
9. COMBINATION.  
Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway  
Co., *et al.*, 166.  
Kemble *v.* Lake Shore & Michigan Southern Railway Co., *et al.*, 166.  
Railroad Commission of Georgia *v.* Clyde Steamship Co., *et al.*, 324.
10. COMMODITY.  
Anthony Salt Co. *v.* St. Louis & San Francisco Railway Co., 299.  
Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co., *et*  
*al.*, 478.
11. DIFFERENTIAL.  
Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway  
Co., *et al.*, 166.  
Kemble *v.* Lake Shore & Michigan Southern Railway Co., *et al.*, 166.  
Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul Railway  
Co., *et al.*, 264.
12. FLOUR.  
Hezel Milling Co. *v.* St. Louis, Alton & Terre Haute Railroad Co., *et*  
*al.*, 57.  
Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co.,  
*et al.*, 571.
13. FURNITURE.  
Murphy, Wasey & Co. *v.* Wabash Railroad Co., *et al.*, 122.  
Potter Manufacturing Co. *v.* Chicago & Grand Trunk R'y Co., *et al.*, 514.
14. GENERAL FREIGHT.  
Railroad Commission of Florida *v.* Savannah, Florida & Western Rail-  
way Co., *et al.*, 13, 136.  
Railroad Commission of Georgia *v.* Clyde Steamship Co., *et al.*, 324.  
Board of Trade of Chattanooga *v.* East Tennessee, Virginia & Georgia  
Railway Co., *et al.*, 546.
15. LUMBER.  
Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul Railway  
Co., *et al.*, 264.  
James & Abbot *v.* Canadian Pacific Railway Co., *et al.*, 612.
16. MARKET PRODUCE.  
Delaware State Grange *v.* New York, Philadelphia & Norfolk Railroad  
Co., *et al.*, 161.  
Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co.,  
*et al.*, 663.

17. **MELONS.**  
Loud *v.* South Carolina Railway Co., *et al.*, 529.
18. **ORANGES.**  
Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.
19. **PASSENGER.**  
*In re* Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.  
Harvey *v.* Louisville & Nashville Railroad Co., 153.
20. **PEACHES.**  
Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co., *et al.*. Re Application of Pennsylvania Railroad Co., 1.  
Delaware State Grange *v.* New York, Philadelphia & Norfolk Railroad Co., *et al.*, 161.
21. **PERISHABLE FREIGHT.**  
Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co., *et al.*, Re Application of Pennsylvania Railroad Co., 1.  
Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.  
Perry *v.* Florida Central & Peninsular Railroad Co., *et al.*, 97.  
Rising *et al.* *v.* Savannah, Florida & Western Railway Co., *et al.*, 120.  
Delaware State Grange *v.* New York, Philadelphia & Norfolk Railroad Co., *et al.*, 161.  
Loud *v.* South Carolina Railway Co., *et al.*, 529.  
Brownell *v.* Columbus & Cincinnati Midland Railroad Co., *et al.*, 638.  
Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co., *et al.*, 663.
22. **PETROLEUM AND ITS PRODUCTS.**  
Rice *v.* Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.  
Rice *v.* Louisville & Nashville Railroad Co., 193.  
Independent Refiners' Association *v.* Western New York & Pennsylvania Railroad Co., *et al.*, 415.  
Independent Refiners' Association *v.* Pennsylvania R. R. Co., *et al.*, 415.  
Parkhurst *v.* Pennsylvania Railroad Co., *et al.*, 635.  
Nicolai *v.* Pennsylvania Railroad Co., *et al.*, 635.  
Rice *v.* St. Louis Southwestern Railway Co., *et al.*, 660.
23. **SALT.**  
Anthony Salt Co. *v.* St. Louis & San Francisco Railway Co., 299.
24. **SHINGLES.**  
James & Abbot *v.* Canadian Pacific Railway Co., *et al.*, 612.
25. **SPRING BED AND MATTRESS MATERIAL.**  
Murphy, Wasey & Co. *v.* Wabash Railroad Co., *et al.*, 122.
26. **SUGAR.**  
Lehmann, Higginson & Co. *v.* Texas & Pacific Railway Co., *et al.*, 44.  
Raworth *v.* Northern Pacific Railroad Co., *et al.*, 234.
27. **WHEAT.**  
Buchanan *v.* Northern Pacific Railroad Co., 7.  
Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co., *et al.*, 571.

#### REASONABLE RATES.

1. **DISAGREEMENT OF CONNECTING CARRIERS AS TO DIVISIONS OF A MAXIMUM THROUGH RATE PRESCRIBED BY THE COMMISSION.**  
Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co., *et al.*. Re Application of Pennsylvania Railroad Co., 1.

## 2. PERISHABLE FREIGHT.

Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co., *et al.*, Re Application of Pennsylvania Railroad Co., 1.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railroad Co., *et al.*, 13, 136.

Perry *v.* Florida Central & Peninsular Railroad Co., *et al.*, 97.

Rising *et al.* *v.* Savannah, Florida & Western Railway Co., *et al.*, 120.

Delaware State Grange, etc. *v.* New York, Philadelphia & Norfolk Railroad Co., *et al.*, 161.

Loud *v.* South Carolina Railway Co., *et al.*, 529.

## 3. WHEAT AND BARLEY.

The rates on wheat and barley of fifty and fifty-six cents per hundred weight, respectively, charged by defendant from Ritzville, Washington, to St. Paul, Minnesota, a distance of 1,576 miles, in view of the circumstances and conditions surrounding the traffic, held not to be unreasonable.

Buchanan *v.* Northern Pacific Railroad Co., 7.

## 4. ELEMENTS WHICH ENTER INTO THE QUESTION.

The increasing or diminishing volume of business, the market price of the articles to be transported, the relation of local to through freights, the articles of freight upon which the railroad must depend as compared with other roads transporting similar commodities through more populous communities, the development of competition, the opening of new lines of communication, the course of business which may concentrate empty cars at either terminus of the line, all have a bearing upon the making of reasonable rates.

Buchanan *v.* Northern Pacific Railroad Co., 7.

## 5. ELEMENTS WHICH ENTER INTO THE QUESTION.

Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of unlawful discrimination, but the amount actually charged on one commodity may be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation.

Rice *v.* Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.

Rice *v.* Louisville & Nashville Railroad Co., 193.

In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered, is to be considered as well as the result of the business to the shipper or producer of the traffic.

Loud *v.* South Carolina Railway Co., *et al.*, 529.

## 6. DIVISION OF THROUGH RATES CONSIDERED IN DETERMINING.

While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.

## 7. CARRIERS SHOULD SHOW JUSTIFICATION FOR ADVANCES IN CHARGES.

Carriers making an advance in rates should be able to present a satisfactory justification of such advances, particularly when the old rates have been of many years standing and the advance is great and the

traffic affected is of large and constantly increasing volume and of vital importance to a large section of the country.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.

8. ORANGES. REPARATION FOR UNREASONABLE CHARGES.

Upon consideration of all the facts and circumstances in this case, *Held*, That the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was without justification, and so far as it exceeded 5 cents per box, was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and, as such persons are not parties to this proceeding and the amounts wrongfully received from them respectively, cannot be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.—*Ib.*

9. BRANCH LINE POINT. REPARATION.

In a case of an unreasonable rate on sugar from New Orleans to Humbolt, Kansas, it was held that complainant was entitled to a refund of the amount paid in excess of a reasonable rate.

Lehmann, Higginson & Co. *v.* Texas & Pacific Railway Co., *et al.*, 44.

10. REQUIREMENTS OF THE ACT. POWER AND DUTY OF THE COMMISSION. REPARATION.

The Act to regulate commerce expressly requires that transportation charges shall be reasonable, and empowers the Commission to enforce its provisions. Whenever the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable. The Commission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order and enforce a rate that is reasonable. The power to determine and declare what is a maximum reasonable rate, also results from those provisions of the Act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference between the rate actually charged and the reasonable rate which should have been charged.

Perry *v.* Florida Central & Peninsular Railroad Co., *et al.*, 97.

11. POWER AND DUTY OF THE COMMISSION TO FIX MAXIMUM RATES IN CASES OF COMPLAINTS AGAINST RATES AS UNJUST, EXCESSIVE AND UNREASONABLE, RE AFFIRMED.

Murphy, Wasey & Co. *v.* Wabash Railroad Co., *et al.*, 122.

12. LOWER RATES ON ONE COMMODITY FORCED BY WATER COMPETITION DO NOT JUSTIFY UNREASONABLE RATES ON ANOTHER COMMODITY NOT AFFECTED BY SUCH COMPETITION.

The possible influence of water competition upon rates for the transportation of oranges and the non-existence of such competition in the carriage of berries, because the latter cannot be carried by water in any considerable quantities, does not authorize defendants to take advantage of the situation and charge unreasonable rates on berries.

Perry *v.* Florida Central & Peninsular Railroad Co., *et al.*, 97.

13. BERRIES.

Circumstances and conditions which affect the question of reasonable rates on strawberries from points in Florida to New York City, including such characteristics of the traffic and its transportation as

volume, weight, bulk, value, perishability, risk, expense of handling and quick carriage in perishable freight trains, and returns of empty cars, stated and compared with those surrounding the transportation of oranges and other traffic carried by defendant in the same trains. Upon the facts appearing in this case, *Held*, That defendant's rate for services rendered in receiving, forwarding by their perishable freight trains, and delivering strawberries from Florida points to New York City should not exceed \$3.33 per hundred pounds, or \$1.66½ per crate of fifty pounds from Callahan, Florida, to New York, and from Lawtey, Hammock Ridge, and other stations more distant from New York than Callahan, the through rates should not be unreasonably in excess of the charge from Callahan, and should be filed with the Commission and published according to law.—*Id.*

14. LARGE AND SMALL CAR-LOAD QUANTITIES.

A carrier should receive a greater compensation in the aggregate for hauling a car-load of large tonnage than one of less tonnage, but, other things being equal, as a general rule, the rate per cwt. should be less in the former than in the latter case.

Murphy, Wasey & Co. v. Wabash Railroad Co., *et al.*, 122.

15. SPRING BED AND MATTRESS MATERIAL. MIXED CAR-LOADS.

A rate prescribed for complainants' shipments in mixed car-loads of chair-stuff, spring bed and mattress material all wooden, minimum weight 25,000 lbs., of not exceeding 20 cents per hundred pounds, from Chicago to Omaha, and not exceeding 15 cents per hundred pounds, from Mississippi river points to Omaha, resulting in a through rate from Detroit to Omaha via Chicago, of 30 cents per hundred pounds, and via Mississippi river points, not through Chicago, of 31½ cents per hundred pounds.—*Id.*

16. BUTTER.

On complaint of an unreasonable rate on butter in less than car-loads from Lincoln, Kansas, to Denver, Colorado, it appeared that defendant's line between those points runs through a sparsely populated country, furnishing comparatively little business to the carrier, and also that the rate is common to numerous towns of importance at an equal or greater distance from Denver, and is maintained by all the roads extending into that territory: *Held*, That the charge complained of is not shown to be unreasonable, nor does the evidence furnish sufficient reason for interfering with a rate established by a number of roads and common to many communities.

Lincoln Creamery v. Union Pacific Railway Co., 156.

17. TRANSPORTATION OF PETROLEUM.

The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance.

Rice v. Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.

The oil rates from Oil City and Titusville, Penn., to New York and New York harbor points, and Boston and Boston points, exclusively of the charge for the barrel package in barrel shipments, are not shown to be either unreasonable in themselves, or relatively unreasonable as between those points.

Independent Refiners Association v. Western New York & Pennsylvania Railroad Co., *et al.*, 415.

Cases re-opened for further evidence and argument in regard to the reasonableness of rates on petroleum products to the Pacific Coast from points east of the 97th meridian.

Rice v. Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.



18. ON SALT FROM KANSAS FIELDS.

Anthony Salt Co. *v.* St. Louis & San Francisco Railway Co., 299.

19. ON COAL.

Upon investigation had in a proceeding instituted by the Commission on its own motion, it appeared that the respondent had in force over its line to Nashville, a special rate on coal when used for manufacturing purposes by persons named upon the manufacturers' lists prepared by the railroad company. These lists were furnished to dealers who, on selling coal to such manufacturers, issued certificates which entitled them to obtain a refund from the railroad company amounting to the difference between the regular and special rates, pending investigation the respondent discontinued the "manufacturers' rate" and put in force a new coal tariff to Nashville, whereby coal, "run of mines, nut and slack," is given a rate of \$1.00 per ton the year round, and "screened" coal a rate of \$1.15 per ton, April to September, and for the remainder of the year a rate of \$1.40 per ton. The rate from the same mines to Memphis, a point affected by water competition for coal traffic is \$1.40 per ton on all coal the year round, and respondent buys coal at the mines and sells it in the Memphis market, *Held*. That the practice abandoned by the respondent common carrier, of arbitrarily determining what persons should receive the so-called "manufacturers' rate," was a clear violation of the Act to regulate commerce. That the rate of \$1.00 per ton charged by respondent upon coal "run of mines, nut and slack," is not unreasonably low, nor disproportionate to the rate of \$1.40 per ton to Memphis; neither, in view of circumstances affecting coal traffic at Memphis, is a rate of \$1.15 on screened coal to Nashville relatively unreasonable as compared with the Memphis rate, but so long as the Memphis rate does not exceed \$1.40, rates on said kinds of coal from the mines to Nashville should not, during any portion of the year, exceed \$1.00 or \$1.15 respectively, and any reduction in the Memphis rate should be accompanied by proportionate reductions in rates on said different kinds of coal to Nashville.

In the Matter of Alleged Unlawful Charges for the Transportation of Coal by the Louisville & Nashville Railroad Co., 466.

20. RATES TO SPOKANE HELD UNREASONABLE.

Merchants Union of Spokane Falls *v.* Northern Pacific Railroad Co., *et al.*, 478.

21. ON COMPETING COMMODITIES.

A rate on a particular class of goods which is unreasonable or discriminating in itself, is not justifiable on the ground that the same rate is given another (and in this case a competitive) class of goods, and as applied to the latter is liberal and advantageous.

Potter Manufacturing Co. *v.* Chicago & Grand Trunk R'y Co., *et al.*, 514.

22. RELATION OF RATES TO COST AND COMMERCIAL VALUE OF TRAFFIC.

Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic (Delaware State Grange of Patrons of Husbandry *v.* New York, P. & N. R. Co., 4 I. C. C. Rep. 605), but it is incumbent on parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value.

Loud *v.* South Carolina Railway Co., *et al.*, 529.

23. EVIDENCE. DIVISION BETWEEN CONNECTING ROADS.

When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges, including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.

James & Abbot *v.* Canadian Pacific Railway Co., *et al.*, 612.

## 24. SPECIAL SERVICE. PERISHABLE FREIGHT. DAMAGE.

Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and, if a carrier charging a rate based on such special service, fails to render it, to the damage of the shipper, and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law.

*Loud v. South Carolina Railway Co., et al., 529.*

## 25. EVIDENCE. REDUCTION OF RATES.

A reduction in rates by a carrier is not *per se* evidence that the former rates were unreasonable, as such reduction may, as in the present case, be accounted for because of a decrease in cost of the transportation and an increase in the volume of the traffic to which such rates apply.  
—*Ib.*

## 26. REDUCTION OF RATES PENDING THE CONTROVERSY. MELONS.

The rates on melons complained of in this case having been materially reduced by the defendant carriers since the commencement of this proceeding and there being no satisfactory evidence that the rates so reduced are unreasonable or excessive, the complaint is dismissed.—*Ib.*

## 27. UNREASONABLE RATES. INDICATED BY DISPROPORTION IN LONG AND SHORT HAUL CHARGES.

When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered.

*Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co., et al., 546.*

When rates from any cause are made greater for shorter than for longer distances the difference between such rates must in no instance be unreasonable.

*Gerke Brewing Co. v. Louisville & Nashville Railroad Co., et al., 596.*

## 28. LOCAL AS PART OF THROUGH RATE OVER CONNECTING LINES.

When local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through line are necessary parties.

*Chamber of Commerce of Minneapolis v. Great Northern Railway Co., et al., 571.*

## 29. ON DIFFERENT BRANCHES OR DIVISIONS.

A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed.

*James & Abbot v. Canadian Pacific Railway Co., et al., 612.*

## 30. ON PETROLEUM. APPLICATION FOR RE-HEARING BY DEFENDANTS DENIED.

*Parkhurst & Co. v. Pennsylvania Railroad Co., et al., 635.*

*Nicolai v. Pennsylvania Railroad Co., et al., 635.*

## 31. CLASSIFICATION.

Unreasonable or unjust classification of a commodity is not shown by evidence of lower classifications for articles widely dissimilar in the elements of risk, weight, bulk, value or general character. The proper method of comparison is the classification accorded by the carriers to analogous articles.

*Brownell v. Columbus & Cincinnati Midland Railroad Co., et al., 639.*

**32. LOWER RATES FOR CAR-LOADS.**

The justice of the claim for a lower rating on car-load lots can only be determined upon the facts in each case.—*Ib.*

**33. ON CELERY.**

For that portion of its line over which the Western Classification is in force, the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that classification, rather than with berries, peaches, grapes, and other fruits specified in Class III. thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per car-load than they charge for carrying a car-load quantity of any of said other vegetables named in Class C aforesaid; and mixed car-loads of celery and cauliflower, or other vegetables specified in said Class C of the Western Classification, should be transported by defendants from Tecumseh to Kansas City at no higher rate per car-load than they charge for carrying a car-load quantity of either of said vegetable articles embraced in that class.

*Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co., et al.*, 663.

**REBATES.**

*Hezel Milling Co. v. St. Louis, Alton & Terre Haute R.R. Co., et al.*, 57.  
*In re Transportation of Coal by the Louisville & Nashville R.R. Co.*, 466.

**RECEIVER.****1. APPOINTED SUBSEQUENT TO COMPLAINT.**

*Railroad Commission of Georgia v. Clyde Steamship Co., et al.*, 324.

**2. APPOINTED SUBSEQUENT TO COMPLAINT. ORDER OF REPARATION.**

*Loud v. South Carolina Railway Co., et al.*, 529.

**RE-HEARING.****APPLICATION FILED SUBSEQUENT TO DECISION DENIED.**

*Boston Fruit & Produce Exchange v. New York & New England Railroad Co., et al.*, Re Application of Pennsylvania Railroad Co., 1.

*Railroad Commission of Florida v. Savannah, Florida & Western Railway Co., et al.*, 136.

*Delaware State Grange, Patrons of Husbandry v. New York, Philadelphia & Norfolk Railroad Co., et al.*, 161.

*Parkhurst & Co. v. Pennsylvania Railroad Co., et al.*, 635.

*Nicolai v. Pennsylvania Railroad Co., et al.*, 635.

**RELATIVE RATES.****1. TO TERMINAL AND BRANCH LINE POINTS.**

*Lehmann, Higginson & Co. v. Texas & Pacific Railway Co., et al.*, 44.

**2. ON LUMBER FROM COMPETING LOCALITIES.**

*Eau Claire Board of Trade v. Chicago, Milwaukee & St. Paul Railway Co., et al.*, 264.

**3. ON CLASS FREIGHTS. BOSTON AND NEW YORK.**

On complaints of unreasonable and discriminating rates from Chicago and other western points to Boston, produced by the addition to rates from the same points to New York, of a so-called arbitrary or differential of 10 cents on first-class articles, 6 cents on goods of the second-class, and 5 cents on the other classes of freight, and which also involved the propriety of combination rates through intermediate points,

the divisions of through rates between the carriers, and the relation of lighterage charges in New York harbor to the rates in question. *Held*, that the question involved herein is the through rate as affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate, except for limited purposes. That it can make no difference to the shipper or the public how carriers adjust between themselves the expense of lighterage paid out of the through rate to New York. That the arbitrary differentials now charged are unlawful and should hereafter be made by adding a percentage to the New York rate on shipments included in the six classes of freight from Chicago and points east thereof, and west of Buffalo to Boston and other New England points, and that defendants and other carriers interested be allowed twenty days to show cause by answer why order should not issue commanding them to desist from charging said arbitrary differentials and requiring said rates to Boston and New England points to be made by adding to the New York rate an increase of ten per cent. thereof, and if no such answers be filed that such order be issued forthwith.

Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway Co., *et al.*, 166.

Kemble *v.* Lake Shore & Michigan Southern Railway Co., *et al.*, 166.

#### 4. CONTINUED REDUCTIONS.

The continued reduction of relative rates when brought about by the removal of artificial and unnatural differences is not undesirable, but when the differences results from dissimilar circumstances and conditions, and the true difficulty appears to be a real and natural advantage which the one region has and enjoys over the other, such continuing disturbances of rates ought not to be inaugurated, especially when the charges are commodity rates not shown to be unreasonable in themselves.

Anthony Salt Co. *v.* St. Louis & San Francisco Railway Co., 299.

#### 5. COMMODITY AND CLASS RATES. SALT.

Salt requires and gets a commodity rate lower than class rates, and the roads should only be limited as to such lower rating, by the rule that a commodity shall not be carried at such unremunerative rates as will impose burdens upon other articles transported to recoup loss incurred in carrying that commodity.—*Ib.*

#### 6. ADDITION OF LOCAL TO THROUGH RATES.

The addition of a local rate to a reasonable through rate, in order to fix the through charge to the local station, is liable to produce a relatively unreasonable rate to that station. The difference in situation of the basing and local points in respect of through traffic is not properly measured by the local rate for carriage between them. The reasonableness of the added local, *as a local rate*, is not under consideration in a case where the rate complained of is the total charge over different lines.

Railroad Commission of Georgia *v.* Clyde Steamship Co., *et al.*, 324.

#### 7. TRANSPORTATION OF PETROLEUM OIL TO NEW YORK AND BOSTON.

The oil rates from Oil City and Titusville, Penn., to New York and New York harbor points, and Boston and Boston points, exclusive of the charge for the barrel package in barrel shipments, are not shown to be either unreasonable in themselves, or relatively unreasonable as between those points.

Independent Refiners Association *v.* Western New York & Pennsylvania Railroad Co., *et al.*, 415.

#### 8. ON COAL.

*In re* Transportation of Coal by Louisville & Nashville R.R. Co., 466.

## 9. BLANKET CLASS RATES.

"Blanket" class rates applying upon the Northern Pacific road for a distance of over five hundred and eighty miles found relatively unreasonable: *also Held*, That rates to Spokane, the principal distributing centre to which such blanket rates apply, are unreasonable in themselves. Defendant ordered to cease and desist from charging rates on property from eastern points to Spokane, which materially exceed 82 per cent. of class rates now in effect, both to Spokane and Pacific coast terminals. Provision made for re-opening the case if necessary, and bringing in other carriers who may be affected by the order.

Merchants Union of Spokane Falls *v.* Northern Pacific R.R. Co. *et al.* 478.

## 10. FINISHED AND UNFINISHED FURNITURE.

Taking into consideration the difference in value of the unfinished and finished cheap bed room sets involved in this case, and the greater tonnage per car-load which can be hauled of the former, and having in view the interests of both carrier and shipper, it is held, that the rate on unfinished cheap bed room sets, as shipped by complainant from Lansing, Mich. to Oakland, Cal., should not exceed 85 per cent. of whatever rate may be adopted for such sets in a finished condition.

Potter Manufacturing Co. *v.* Chicago & Grand Trunk R'y Co., *et al.*, 514.

## 11. ADJUSTMENT OF WHEAT RATES TO COMPETING LOCALITIES ON BASIS OF DISTANCE OVER NEAREST PRACTICABLE ROUTES.

Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co., *et al.*, 571.

## 12. ON SHINGLES FROM COMPETING MILLS.

James & Abbot *v.* Canadian Pacific Railway Co., *et al.*, 612.

## 13. LARGE AND SMALL SHIPMENTS OF EGGS.

Brownell *v.* Columbus & Cincinnati Midland Railroad Co., *et al.*, 638.

## 14. ON CELERY AND OTHER VEGETABLES.

Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co., *et al.*, 663.

See PREFERENCE OR ADVANTAGE.

## REPARATION.

## 1. AWARDED.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.

Lehmann, Higginson & Co. *v.* Texas & Pacific Railway Co., *et al.*, 44.

Macloon *v.* Chicago & Northwestern Railway Co., 84.

Independent Refiners Association *v.* Western New York & Pennsylvania Railroad Co., *et al.*, 415.

Independent Refiners Association *v.* Pennsylvania Railroad Co. *et al.* 415

## 2. DENIED.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.

Perry *v.* Florida Central & Peninsular Railroad Co., *et al.*, 97.

Rising *et al.* *v.* Savannah, Florida & Western Railway Co., *et al.*, 120.

Potter Manufacturing Co. *v.* Chicago & Grand Trunk R'y Co., *et al.*, 514.

Loud *v.* South Carolina Railway Co., *et al.*, 529.

James & Abbot *v.* Canadian Pacific Railway Co., *et al.*, 612.

## 3. DUTY OF THE COMMISSION TO PASS UPON THE QUESTION.

The provisions of the eighth, ninth, thirteenth, fourteenth, fifteenth and sixteenth sections of the Act to regulate commerce, construed in the light of recent decisions in Federal Courts. *Held*, That a procedure for the enforcement of lawful orders of the Commission, founded upon

controversies requiring trial by jury, having been provided by the amendment of March 2, 1899, of the sixteenth section of the Act to regulate commerce, it is the duty of the Commission to pass upon the question of reparation for past damages whenever a claim is made therefor.

*Macloon v. Chicago & Northwestern Railway Co.* 84.

4. **BURDEN OF PROOF, WHEN ON COMPLAINANT.**

When claim for reparation is made in a complaint of unreasonable rates, the burden of proof is on complainant to show facts connected with the claim, and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant in such cases, it will decline to award reparation.

*Perry v. Florida Central & Peninsular Railroad Co., et al.*, 97.

5. **SPECULATIVE DAMAGES.**

If defendants' rate on strawberries had been so excessive and unjust as to have rendered complainant's crop valueless to pick and market, it would not entitle him to reparation for loss thereby sustained, because such damages would be too speculative, uncertain and remote.—*Ib.*

6. **RECEIVER APPOINTED SUBSEQUENT TO COMPLAINT.**

The question, whether property of a carrier in the hands of a receiver appointed after the matters complained of before this Commission are alleged to have occurred, is subject to an order of reparation issued by this Commission, is one to be presented to and disposed of by the courts on proceedings therein for the enforcement of such order.

*Loud v. South Carolina Railway Co., et al.*, 529.

**SALT.**

*Anthony Salt Co. v. St. Louis & San Francisco Railway Co.*, 299.

**SCHEDULES.**

See **TARIFFS.**

**SECOND SECTION OF THE ACT.**

See **ACT TO REGULATE COMMERCE. UNJUST DISCRIMINATION.**

**SHINGLES.**

*James & Abbot v. Canadian Pacific Railway Co., et al.*, 612.

**SHIPPERS.**

**CONCENTRATED BUSINESS INTERESTS.**

Power of concentrated business interests to force concessions in transportation rates which operate to the disadvantage of the general public discussed.

*Brownell v. Columbus & Cincinnati Midland Railroad Co., et al.*, 688.

**SIDE TRACK DELIVERY OF FREIGHTS.**

*Hezel Milling Co. v. St. Louis, Alton & Terre Haute Railroad Co., et al.*, 57.

## SIXTH SECTION OF THE ACT.

See ACT TO REGULATE COMMERCE. TARIFFS. UNJUST DISCRIMINATION.

## SPECIAL SERVICE.

Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co., *et al.*, Re Application of Pennsylvania Railroad Co., 1.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.  
 Perry *v.* Florida Central & Peninsular Railway Co., *et al.*, 97.  
 Rising *et al.* *v.* Savannah, Florida & Western Railway Co., *et al.*, 120.  
 Delaware State Grange *v.* New York, Philadelphia & Norfolk Railroad Co., *et al.*, 161.  
 Loud *v.* South Carolina Railway Co., *et al.*, 529.  
 Gerke Brewing Co. *v.* Louisville & Nashville Railroad Co. *et al.*, 596.  
 Brownell *v.* Columbus & Cincinnati Midland Railroad Co., *et al.*, 638.  
 Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co., *et al.*, 663.

## SPRING BED &amp; MATTRESS MATERIAL.

Murphy, Wasey & Co. *v.* Wabash Railroad Co., *et al.*, 122.

## STATE RAILROAD COMMISSIONS.

1. COMPLAINTS BY.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co., *et al.*, 324.
2. WHEN PENDING THE CONTROVERSY THE COMPLAINING COMMISSION HAS CEASED TO EXIST.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.

See PRACTICE.

## STATE RAILROADS.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.  
 Railroad Commission of Georgia *v.* Clyde Steamship Co., *et al.*, 324.  
 Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co., *et al.*, 571.

## SUGAR.

Lehmann, Higginson & Co. *v.* Texas & Pacific Railroad Co., *et al.*, 44.  
 Raworth *v.* Northern Pacific Railroad Co., 234.

## TANK CARS.

See CARS.

## TARIFFS.

1. FILING AND PUBLICATION OF.  
 It does not appear that defendants willfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that anyone has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission to a District Attorney of the United States



for the institution of a prosecution, and no ground for a recommendation of reparation for such injury.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.

## 2. JOINT.

A schedule of rates designated a "joint freight tariff," announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar, was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said Association "and connections." The Texas & Pacific Railway Co., a member of said Association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said Traffic Association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City: *Held*, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish as provided by section 6 of the Act to regulate commerce, a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City, over the roads of said Association, or of any one of them, in connection with any other road or roads. *Held further*, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.

Lehmann, Higginson & Co. *v.* Texas & Pacific Railway Co., *et al.*, 44.

## 3. REBATES FROM COAL RATES TO MANUFACTURERS.

In the Matter of Alleged Unlawful Charges for the Transportation of Coal by Louisville & Nashville Railroad Co. 466.

## THIRD SECTION OF THE ACT.

See ACT TO REGULATE COMMERCE: PREFERENCE OR ADVANTAGE; RELATIVE RATES.

## THROUGH RATES.

### 1. DIVISIONS. DISAGREEMENT OF CONNECTING CARRIERS AFTER DECISION. SPECIAL SERVICE FOR PERISHABLE FREIGHT.

At a hearing of this case upon its merits, the Commission prescribed the freight rate upon peaches in car-load lots, from New Jersey and the Delaware peninsula, to Boston, Massachusetts. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely: *Held*, That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company, and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case the Commission could only prescribe a single rate for the service as an entirety, to be reasonably and fairly divided among the several carriers by themselves; that, the motion for a rehearing be overruled.

Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co. *et al.* Re Application of Pennsylvania Railroad Co., 1.

## 2. DIVISIONS BETWEEN CONNECTING ROADS.

While a complainant has no interest in the decision the defendants made between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.

Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.

Divisions of a joint rate among the carriers are sometimes inquired into for the purpose of ascertaining, from the divisions, whether a rate unreasonable in itself may not be traced to the inequality of such divisions.

Perry *v.* Florida Central & Peninsular Railroad Co. *et al.*, 97.

The question involved herein is the through rate affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate, except for limited purposes. It can make no difference to the shipper or the public how carriers adjust between themselves the expense of lighterage paid out of the through rate to New York.

Toledo Produce Exchange *v.* Lake Shore & Michigan Southern Railway Co. *et al.*, 166.

Kemble *v.* Lake Shore & Michigan Southern Railway Co., *et al.*, 166.

When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges, including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.

James & Abbot *v.* Canadian Pacific Railway Co. *et al.*, 612.

## 3. WHAT CONSTITUTES THE THROUGH OR AGGREGATE CHARGE.

Where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.

Lehmann, Higginson & Co. *v.* Texas & Pacific Railroad Co. *et al.*, 44

The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves.

Railroad Commission of Georgia *v.* Clyde Steamship Co. *et al.*, 324.

When a local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through line are necessary parties.

Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co. *et al.*, 571.

This traffic from Tecumseh, Mich. for Kansas City, Missouri, is taken in Wabash cars to East St. Louis, Illinois, under the Official Classification and joint through rate of defendant carriers, and from East St. Louis the carriage is continued in the same cars to Kansas City under the Western Classification and the tariff rate on the Wabash road.

but the carriage is continuous, and there is but one through shipment and one through charge from Tecumseh to the point of destination.  
**Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co., et al., 663.**

See COMMON CONTROL, MANAGEMENT OR ARRANGEMENT.

### THROUGH ROUTES AND THROUGH RATES.

See COMMON CONTROL, MANAGEMENT OR ARRANGEMENT; THROUGH RATES.

### TRAFFIC.

1. **BARLEY.**  
**Buchanan v. Northern Pacific Railroad Co., 7.**
2. **BEER.**  
**Gerke Brewing Co. v. Louisville & Nashville Railroad Co. et al., 596.**
3. **BERRIES.**  
**Perry v. Florida Central & Peninsular Railroad Co. et al., 97.**  
**Rising et al. v. Savannah, Florida & Western Railway Co. et al., 120.**
4. **BUTTER.**  
**Lincoln Creamery v. Union Pacific Railway Co., 166.**
5. **CELERY.**  
**Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co. et al., 663.**
6. **CLASS FREIGHTS.**  
**Toledo Produce Exchange v. Lake Shore & Michigan Southern Railway Co. et al., 166.**  
**Kemble v. Lake Shore & Michigan Southern Railway Co. et al., 166.**  
**Railroad Commission of Georgia v. Clyde Steamship Co. et al., 324.**  
**Merchants Union of Spokane Falls v. Northern Pacific Railroad Co. et al., 478.**
7. **COAL.**  
**Macloon v. Chicago & Northwestern Railway Co., 84.**  
**In re Transportation of Coal by the Louisville & Nashville Railroad Co., 466.**
8. **EGGS.**  
**Brownell v. Columbus & Cincinnati Midland Railroad Co. et al., 638.**
9. **FLOUR.**  
**Hezel Milling Co. v. St. Louis, Alton & Terre Haute Railroad Co. et al., 57.**  
**Chamber of Commerce of Minneapolis v. Great Northern Railway Co. et al., 571.**
10. **FURNITURE.**  
**Murphy, Wasey & Co. v. Wabash Railroad Co., et al., 122.**  
**Potter Manufacturing Co. v. Chicago & Grand Trunk Railway Co. et al., 514.**
11. **GENERAL FREIGHT.**  
**Railroad Commission of Florida v. Savannah, Florida & Western Railway Co. et al., 13, 136.**  
**Railroad Commission of Georgia v. Clyde Steamship Co. et al., 324.**  
**Board of Trade of Chattanooga v. East Tennessee, Virginia & Georgia Railway Co. et al., 546.**

12. **LUMBER.**  
 Eau Claire Board of Trade *v.* Chicago, Milwaukee & St. Paul Railway Co. *et al.*, 264.  
 James & Abbot *v.* Canadian Pacific Railway Co. *et al.*, 612.
13. **MARKET PRODUCE.**  
 Delaware State Grange *v.* New York, Philadelphia & Norfolk Railroad Co. *et al.*, 161.  
 Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co. *et al.*, 663.
14. **MELONS.**  
 Loud *v.* South Carolina Railway Co. *et al.*, 529.
15. **ORANGES.**  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co. *et al.*, 13, 136.
16. **PASSENGER.**  
*In re* Carriage of Persons Free or at Reduced Rates by the Boston & Maine Railroad Co., 69.  
 Harvey *v.* Louisville & Nashville Railroad Co., 153.
17. **PEACHES.**  
 Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co. *et al.* Re Application of Pennsylvania Railroad Co., 1.
18. **PERISHABLE FREIGHT.**  
 Boston Fruit & Produce Exchange *v.* New York & New England Railroad Co., *et al.*, Re Application of Pennsylvania Railroad Co. 1.  
 Railroad Commission of Florida *v.* Savannah, Florida & Western Railway Co., *et al.*, 13, 136.  
 Perry *v.* Florida Central & Peninsular Railroad Co., *et al.*, 97.  
 Rising *et al. v.* Savannah, Florida & Western Railway Co., *et al.*, 120.  
 Delaware State Grange *v.* New York, Philadelphia & Norfolk Railroad Co., *et al.*, 161.  
 Loud *v.* South Carolina Railway Co., *et al.*, 529.  
 Brownell *v.* Columbus & Cincinnati Midland Railroad Co., *et al.*, 638.  
 Tecumseh Celery Co. *v.* Cincinnati, Jackson & Mackinaw Railway Co., *et al.*, 663.
19. **PETROLEUM AND ITS PRODUCTS.**  
 Rice *v.* Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.  
 Rice *v.* Louisville & Nashville Railroad Co., 193.  
 Independent Refiners Association *v.* Western New York & Pennsylvania Railroad Co., *et al.*, 415.  
 Independent Refiners Association *v.* Pennsylvania R.R. Co., *et al.*, 415.  
 Parkhurst *v.* Pennsylvania Railroad Co., *et al.*, 635.  
 Nicolai *v.* Pennsylvania Railroad Co., *et al.*, 635.  
 Rice *v.* St. Louis Southwestern Railway Co., *et al.*, 660.
20. **SALT.**  
 Anthony Salt Co. *v.* St. Louis & San Francisco Railway Co., 299.
21. **SHINGLES.**  
 James & Abbot *v.* Canadian Pacific Railway Co., *et al.*, 612.
22. **SPRING BED AND MATTRESS MATERIAL.**  
 Murphy, Wasey & Co. *v.* Wabash Railroad Co., *et al.*, 122.
23. **SUGAR.**  
 Lehmann, Higginson & Co. *v.* Texas & Pacific Railway Co., *et al.*, 44.  
 Raworth *v.* Northern Pacific Railroad Co., 234.
24. **WHEAT.**  
 Buchanan *v.* Northern Pacific Railroad Co., 7.  
 Chamber of Commerce of Minneapolis *v.* Great Northern Railway Co., *et al.*, 571.

## TRAFFIC ASSOCIATION.

## FILING OF TARIFFS BY.

Lehmann, Higginson & Co. v. Texas & Pacific Railway Co., *et al.*, 44.

## TRANSPORTATION.

See TRAFFIC; CAR-LOADS AND LESS THAN CAR-LOADS; MIXED CAR-LOADS; SPECIAL SERVICE.

## UNJUST DISCRIMINATION.

## 1. BETWEEN LOCALITIES.

Several railway companies forming a continuous through line carried certain traffic to the terminal point, at a 30 cent rate, and for the same rate to an intermediate point, and to a point on a branch line more distant than the said intermediate, but less distant than said terminal point, they maintained a rate of 42 cents on the like traffic: *Held*, That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch line point off the direct through line without unjust discrimination. *Held further*, That as to the branch line point the complainant was entitled to a refund of amount paid in excess of a reasonable rate.

Lehmann, Higginson & Co. v. Texas & Pacific Railway Co., *et al.*, 44.

## 2. FREE CARTAGE AND SIDE TRACK DELIVERY.

For the carrier to pay the larger expense of the transportation of a remote shipper's merchandise to the station, and not to pay the less expense of such transportation of the nearer shipper's merchandise, would be the equivalent of a rebate to the former, the railroad service proper being the same to each and at the same rate; nor would it be treating all patrons with statutable equality to bear a part of the cartage expense for one shipper and not bear a part of it for another.

Hazel Milling Co., v. St. Louis, Alton & Terre Haute R.R. Co., *et al.*, 57.

## 3. Rates for the transportation of flour originating at St. Louis or East St.

Louis and shipped over defendants' lines are the same, and such flour is forwarded by the first named defendant from its receiving station in East St. Louis. Shippers in St. Louis deliver flour to rail or wagon transfer companies at their stations in St. Louis, and defendants bear the cost of transfer to said receiving station, the average being about six cents per barrel, or St. Louis shippers sometimes deliver to the wagon transfer company at their mill doors, and then bear half of the cartage expense by wagon, the defendants the other half. Petitioner, who is a manufacturer and shipper of flour over defendants' lines in competition with St. Louis millers, teams flour from its mill about one-half a mile to said receiving station at East St. Louis at a cost of six cents a barrel, or loads it on cars furnished by the defendants on a side track contiguous to said mill at a cost of about three cents a barrel, being required to so load such cars that the lot for the nearest station is placed in the forward part of the train, and lots for other stations are arranged consecutively, according to distance, and also being required to clean and repair said cars before using. *Held*, That on flour destined to points outside the State which the initial carrier requests petitioner to haul to its station, or which petitioner is compelled to haul there by reason of proper cars not being furnished on said side track for loading, petitioner is entitled to a reduction of six cents a barrel from rates in force so long as defendants bear that amount of the cost of cartage for other shippers. *Held, further*, That defendants' rule requiring petitioner to clean and repair cars furnished

on said side track is unreasonable, but the requirement that petitioner shall load such cars according to stations is, in view of counter advantages, not unreasonable, and rates on flour loaded by petitioner in properly cleaned and repaired cars so furnished are, upon the facts, properly the same as rates in force on shipments of flour originating in St. Louis.—*Ib.*

With reference to the transportation of flour defendants seem to treat St. Louis and East St. Louis as a single business community; therefore, they cannot complain if this case is determined upon that theory. Taking petitioner's flour in cars from its mill is presumably equal, in value to its expense of hauling by team; therefore, petitioner cannot complain that the carriers bear a portion of the cartage expense of the St. Louis millers equal to the benefit it receives from being able to deliver on the side track at its mill. Questions arising under a practice of partial or absolute free carriage, or growing out of the existence of side tracks to shippers' doors, must depend largely for solution on the particular circumstance of each case.—*Ib.*

#### 4. FREE PASSES AND FREE TRANSPORTATION. CONSTRUCTION.

Upon the facts found in this case, *Held*, That the second section of the Act prohibits the giving of free transportation to the persons embraced within the classes first above named; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, "under substantially similar circumstances and conditions," relate to the nature and character of the service rendered by the carrier, and not to the official, social or business position of the passenger; that section twenty-two of the Act is exceptive in character and only applies to the persons and subjects expressly specified therein.

*In re* Carriage of Persons Free or at Reduced Rates, by the Boston and Maine Railroad Co., 69.

The action of the defendant, in granting to members of the City Council of New Orleans and the clerk of that body, on account of their official positions, free transportation as passengers over all or some portion of its interstate lines, violates the Act to regulate commerce and is unlawful. *Case of Boston & Maine Railroad Co.* approved and followed. *Harvey v. Louisville & Nashville Railroad Co.*, 153.

#### 5. CONSTRUCTION.

The second, third and fourth sections of the Act to regulate commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country and methods of trade and transportation, considered and criticised.

*Railroad Commission of Georgia v. Clyde Steamship Co., et al.*, 324.

#### 6. DIFFERENT PROPORTIONS OF THROUGH RATES FOR SIMILAR SERVICE.

The question involved herein is the through rate as affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate, except for limited purposes.

*Toledo Produce Exchange v. Lake Shore & Michigan Southern Railway Co., et al.*, 166.

*Kemble v. Lake Shore & Michigan Southern Railway Co., et al.*, 166.

#### 7. EQUIPMENT. SHIPPERS' CARS. EXCLUSIVE USE. RATES. DUTY OF COMMISSION.

The Commission possesses no authority to compel carriers, subject to its jurisdiction, to provide any particular kind of cars or other special equipment, but, in the absence of adequate equipment, freely afforded



to all patrons alike, carriers should so adjust rates between those who can and those who cannot furnish their own conveyance, that in the relative charges to each there shall be no discrimination against the dependent shipper.

Rice v. Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.

Rice v. Louisville & Nashville Railroad Co., 193.

It is the duty of the carrier to equip its road with the means of transportation, and, in the absence of exceptional conditions, those means must be open impartially to all shippers of like traffic.

Independent Refiners Association v. Western New York & Pennsylvania Railroad Co., *et al.*, 415.

Ownership of a car rented to a carrier, and for the use of which the carrier pays a full consideration, does not of itself entitle the owner to exclusive use of such car, and, if the owner may in the contract of hire to the carrier, stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired.—*Ib.*

#### 8. TANK AND BARREL TRANSPORTATION OF PETROLEUM.

An allegation of unjust discrimination resulting from shipments of oil in tank cars owned by the shipper, and low return rates on cotton seed oil and turpentine in the same tanks, in connection with mileage paid for use of tank cars, cannot be sustained without evidence showing mutuality of interest between the two classes of shippers or the payment of excessive car mileage.

Rice v. Cincinnati, Washington & Baltimore Railroad Co., *et al.*, 193.

Rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance. A regulation which promotes fairness and relative equality where the carriage of oil is confined to tank and barrel shipments might be an unjust and oppressive requirement where 4-5 of the transportation is affected by another mode. The question in these cases of free carriage of barrels in petroleum shipments is not now decided.—*Ib.*

The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier.—*Ib.*

Where oil is transported by the carrier both in barrels and tank cars, and the use of the tank cars is not open to shippers impartially, but is practically limited to one class of shippers, the charge for the barrel package in barrel shipments in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels and on like quantities of oil between like points of shipment destination than to the tank shipper, is a discrimination against the former in favor of the latter, for which no legal justification has been shown in these cases.

Independent Refiners Association v. Western New York & Pennsylvania Railroad Co., *et al.*, 415.

#### 9. TRANSPORTATION OF PETROLEUM. PARTIAL CONCESSION OF RELIEF.

Some of the grievances alleged in the complaint were subsequently removed by defendants as a result of the Commission's order in other cases. The other charges were denied by the defendants in their verified answers, and that denial was fortified by the positive testimony of witnesses. The petitioner did not appear at the hearing, though duly



notified thereof, and offered no proof in support of the information and belief upon which his allegations were made. *Held*, That as to these charges the complaint must be dismissed.

Rice v. St. Louis Southwestern Railway Co., *et al.*, 660.

10. BETWEEN LOCALITIES.

Section 2 of the "Act to regulate commerce," forbidding unjust discrimination, applies even in cases where a departure from the "long and short haul rule" of the statute is shown to be authorized, and the right, if established, of making the greater charge for the short haul, does not justify a disparity in rates so great as to result in unjust discrimination.

Raworth v. Northern Pacific Railroad Co., 234.

The facts that the rates to the longer distance point cannot be raised without a loss of the traffic involved, and that the rates to both the long distance point and the short distance point are not unreasonable in themselves, do not justify a disparity in such rates resulting in unjust discrimination as against the shorter distance point.—*Ib.*

11. DISCOUNT FROM COAL TARIFF TO MANUFACTURERS.

The practice abandoned by the respondent of arbitrarily determining what persons should receive the so-called "manufacturers' rates," was a clear violation of the Act to regulate commerce.

In the Matter of Alleged Unlawful Charges for the Transportation of Coal by the Louisville & Nashville Railroad Co., 466.

12. THROUGH IMPROPER DIFFERENCES BETWEEN LONG AND SHORT HAUL RATES

No article should be carried to terminal points on commodity rates, which, if the class rates were imposed would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination, against the intermediate town compelled to pay the higher class rate on the same article.

Merchants Union of Spokane Falls v. Northern Pacific Railroad Co., *et al.*, 478.

13. BETWEEN COMMODITIES.

A rate on a particular class of goods which is unreasonable or discriminatory in itself, is not justifiable on the ground that the same rate is given another (and in this case a competitive) class of goods and as applied to the latter is liberal and advantageous.

Potter Manufacturing Co. v. Chicago and Grand Trunk Railway Co., *et al.*, 514.

14. COMMODITIES.

For that portion of its line over which the Western Classification is in force, the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that classification, rather than with berries, peaches, grapes, and other fruits specified in Class III. thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per car-load than they charge for carrying a car-load quantity of any of said other vegetables named in Class C aforesaid; and mixed car-loads of celery and cauliflower or other vegetables specified in Class C of the Western Classification, should be transported by the defendants from Tecumseh to Kansas City at no higher rate per car-load than they charge for carrying a car-load quantity of either of said vegetable articles embraced in that class.

Tecumseh Celery Co. v. Cincinnati, Jackson & Mackinaw Railway Co., *et al.*, 663.

